



# National Emergency Watershed Protection Program Manual



The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14<sup>th</sup> and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

## **TABLE OF CONTENTS**

### **PART 500 - INTRODUCTION**

#### **Subpart A - General**

**500.0 Purpose**

**500.1 Objective**

**500.2 Scope**

**500.3 Delegated Authority**

**500.4 Applicable Laws and Regulations**

**500.5 Responsibilities**

**500.6 Requests for Waivers**

#### **Subpart B - Coordination**

**500.10 Pre-Disaster Preparedness**

**500.11 Disaster Alert and Response**

### **PART 501 – PROGRAM ADMINISTRATION**

#### **Subpart A - General**

**501.0 Introduction**

**501.1 Electronic Disaster Reports**

**501.2 Project Code Numbers**

**501.3 Eligibility for Recovery Assistance**

**501.4 Limitations**

**501.5 Appeal Rights**

**501.6 Cost-Sharing**

**501.7 Exigency Situations**

#### **Subpart B - Assistance**

**501.10 Requests for Assistance**

**501.11 Drawing Accounts**

**501.12 Fund Allocation and Usage**

**PART 502 – PLANNING AND IMPLEMENTATION**

**Subpart A - Planning**

**502.0 USDA Response**

**502.1 Damage Survey Report (DSR)**

**502.3 Planning Considerations**

**502.4 Defensibility**

**502.5 Technical Adequacy**

**502.6 Cultural Resources**

**Subpart B - Implementation**

**502.10 Agreements**

**502.11 Contracts**

**502.12 Land Rights and Permits**

**502.13 Performance Time Requirements**

**502.14 Priority Setting**

**502.15 Operation and Maintenance (O&M)**

**PART 503 – POST-DISASTER ACTIVITIES**

**Subpart A - General**

**503.0 Follow-up Coordination**

**503.1 Final Report**

**503.2 EWP Accomplishment and Benefits Database**

**503.3 EWP Performance Measures**

**PART 504 – RESERVED**

## **PART 505 - EXHIBITS**

### **Subpart A – Plans**

**505.0 State Emergency Recovery Plan (ERP)**

**505.1 Reserved**

**505.2 Reserved**

**505.3 Reserved**

**505.4 Reserved**

**505.5 Reserved**

**505.6 Reserved**

### **Subpart B – Definitions**

**505.10 Definition of Terms**

**505.11 Explanation of Acronyms**

### **Subpart C – Forms**

**505.20 EWP Recovery Measure Forms**

**505.21 Reserved**

### **Subpart D – Statutes and Regulations**

**505.30 Statutory Authority**

**505.31 Applicable Regulations**

## **PART 500 — INTRODUCTION**

### **Subpart A — General**

**500.0 Purpose**

**500.1 Objective**

**500.2 Scope**

**500.3 Delegated Authority**

**500.4 Applicable Laws and Regulations**

**500.5 Responsibilities**

**500.6 Requests for Waivers**

### **Subpart B — Coordination**

**500.10 Pre-Disaster Preparedness**

**500.11 Disaster Alert and Response**

## **PART 500 – INTRODUCTION**

### **SUBPART A – GENERAL**

#### **500.0 Purpose**

##### **A. Program Statutory Authorities**

This manual sets forth the requirements and procedures for Federal assistance provided by the Natural Resources Conservation Service (NRCS) under the following:

- (i) Public Law 81–516 Section 216, 33 U.S.C. 701b
- (ii) Public Law 95–334 Section 403 of Title IV of the Agricultural Credit Act of 1978

##### **B. Program Regulation**

The manual represents NRCS policy for administering of the Emergency Watershed Protection (EWP) program as set forth in 7 CFR 624.

##### **C. Policy Applicability**

- (1) The policies set forth in this manual are applicable to projects carried out under the statutory authorities set forth in paragraph A above.
- (2) This manual has been designed to provide maximum flexibility yet ensure consistency and efficient program delivery across the Nation. It replaces Part 509, Emergency Watershed Protection, of the National Watershed Manual. Part 509 should be removed from the National Watershed Manual.
- (3) All interpretations must be made within the constraints of the authorizing legislation, the program regulation, and the Final Programmatic Environmental Impact Statement (EIS).
- (4) This manual pertains only to EWP recovery measures.

#### **500.1 Objective**

##### **A. Eligible Assistance**

The EWP program helps project sponsors and individuals implement emergency recovery measures to relieve imminent hazards to life and property created by a natural disaster that causes a sudden impairment of a watershed.

##### **B. Program Limitations**

Assistance is available only when public or private landowners, land managers, land users, or others document that they have exhausted other resources or have insufficient funding available to provide adequate relief from applicable hazards. (*See* 7 CFR 624.6(b)(3)(iv).)

#### **500.2 Scope**

##### **A. EWP technical and financial assistance may be made available, dependent upon funding, when—**

- (1) The President has declared an emergency.
- (2) The State Conservationist (STC) has declared a local or State emergency.
- (3) The Secretary of Agriculture has declared a drought emergency.

##### **B. Assistance available under EWP consists of installing emergency measures to reduce hazards to life and property.**

C. The EWP program is authorized in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

### 500.3 Delegated Authority

#### A. Role of NRCS

Administration of the EWP program has been delegated to NRCS. Overall administrative direction and guidance is provided through the following documents:

- (i) 7 CFR Part 624
- (ii) National EWP Program Manual Parts 500–505
- (iii) EWP Emergency Recovery Plans developed by the STC
- (iv) EWP Programmatic Environmental Impact Statement

#### B. Local Natural Disasters

The STC may declare a “local” emergency and provide assistance under the EWP program authority. The participation of a local sponsoring organization is required and coordination with other agencies should be conducted as appropriate.

**Note:** Only the Secretary of Agriculture can make a drought declaration.

### 500.4 Applicable Laws and Regulations

Emergency watershed protection measures shall adhere to all applicable Federal, State, Tribal, and local laws and regulations. The major Federal laws and Presidential Executive Orders are as follows:

- (1) The National Environmental Policy Act (NEPA) requires that Federal agencies consider the environmental impacts of their proposed actions before they are implemented and document those impacts in the form of an environmental assessment or impact statement, giving the public the opportunity to comment. The NRCS policy on compliance with NEPA is located at 7 CFR 650, General Manual Title 190, Part 410, and the National Environmental Compliance Handbook, NECH, 190–610.
- (2) The Endangered Species Act of 1973, as amended, seeks to conserve and protect threatened and endangered species.
- (3) The Federal Water Pollution Control Act of 1972, as amended, requires Section 404 permits for placing dredged material or fill into or adjacent to navigable waters, including wetlands.
- (4) Executive Order 12898 “Environmental Justice” requires each Federal agency to conduct programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefits of, or subjecting persons to discrimination under such programs, policies, and activities, because of race, color, or national origin.
- (5) The National Historic Preservation Act, 16 U.S.C. 470f, as amended, directs all Federal agencies to establish a (historic) preservation program. This program is intended to create policies and procedures that foster agency program and project development so that our modern society and our prehistoric and historic resources will co-exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations. The NRCS policy is set forth in the General Manual Title 420, Part 401 and the NRCS nationwide Programmatic Agreement with the Advisory Council on Historic Preservation and National Conference of State Historic Preservation Officers. Procedures for compliance with the NHPA are found in the National Cultural Resources Procedures Handbook, NCRPH,

190–601. This national handbook also discusses related laws and executive orders that direct federal agencies on the need to consult with American Indian tribes regarding cultural resources and sacred sites.

- (6) Executive Order 11990, “Protection of Wetlands.” — Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for
  - (i) Acquiring, managing, and disposing of Federal lands and facilities.
  - (ii) Providing federally undertaken, financed, or assisted construction and improvements.
  - (iii) Conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.
- (7) Executive Order 11988, “Floodplain Management.” — Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare; and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for
  - (i) Acquiring, managing, and disposing of Federal lands and facilities.
  - (ii) Providing federally undertaken, financed, or assisted construction and improvements.
  - (iii) Conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

## 500.5 Responsibilities

### A. National Headquarters Staff

- (1) The Deputy Chief for Programs and the Director, Conservation Planning and Technical Assistance Division (CPTAD) will, through the National EWP Program Manager —
  - (i) Coordinate the EWP program between States.
  - (ii) Ensure that statutes, regulations, and policies are followed.
  - (iii) Ensure that the program is implemented uniformly.
- (2) The Regional Assistant Chiefs are responsible for providing coordination when multistate disasters occur. When more than one region is involved, the Chief will assign the lead responsibility.

### B. State Conservationist (STC)

The State Conservationist or designee is responsible for the following:

- (i) Implementing the EWP program in the State.
- (ii) Declaring a State or local emergency.
- (iii) Ensuring that only eligible work is carried out and that it is in compliance with all statutes, regulations, and policies.
- (iv) Establishing priorities as set forth in 7 CFR Part 624.8(c)(3).
- (v) Submitting a request for funding.
- (vi) Ensuring sufficient staffing.
- (vii) Coordinating with the National Headquarters staff and others as appropriate.
- (viii) Developing and maintaining the State's EWP Emergency Recovery Plan.
- (ix) Appointing a State EWP Program Manager.
- (x) Submitting Final Reports.

### C. State EWP Program Manager

The State EWP Manager or designee is responsible for the following:

- (i) Keeping the STC informed of all EWP activities.
- (ii) Providing overall coordination of the EWP program.



## National Emergency Watershed Protection Program Manual

- (iii) Coordinating the EWP Emergency Recovery Plan with project sponsors and partners.
- (iv) With concurrence from the STC or designee, establishing or assigning interdisciplinary Damage Survey Report (DSR) teams:
  - Assuring DSR teams are groups of specialists to evaluate damage sites, complete DSRs, and make recommendations on the eligibility and defensibility of each site.
  - Assuring DSR team members have expertise in the following fields: contracting, economics, engineering, environmental issues, cultural resources, construction or inspection.
- (v) Ensuring proper coordination among Federal, State, Tribal governments, and local agencies in developing a list of priorities on all proposed emergency work.
- (vi) Providing training and technical and administrative assistance to local field office teams to resolve problems.
- (vii) Tracking program activities, defensibility of work, and expenditures of funds; and preparing final reports.

### D. Contracting Officer (CO)

The Contracting Officer is responsible for the following:

- (i) Working with the State EWP Program Manager to initiate project and other agreements.
- (ii) Explaining to sponsors the administrative process and contracting alternatives.
- (iii) Obtaining bids and quotes.
- (iv) Awarding and administering all Federal acquisition contracts.
- (v) With recommendations from the State Resource Conservationist or State Conservation Engineer, appointing the contracting officer's representatives (COR) and inspectors.
- (vi) Accepting the completed work for contracts completed using federal acquisition procedures.

### E. State Conservation Engineer (SCE)

The State Conservation Engineer is responsible for the following:

- (i) Determining construction requirements.
- (ii) Taking the lead in developing the NRCS quality assurance plans.
- (iii) Assuring proper reviews and approvals of plans and specifications before contracting.
- (iv) Determining operation and maintenance (O&M) requirements, if needed.
- (v) Making recommendations to the contracting officer for the appointment of COR and inspectors for engineering work.
- (vi) Providing the necessary technical guidance for inspection, documentation, and acceptance of all work within their scope of responsibility.

### F. State Resource Conservationist (SRC)

The State Resource Conservationist is responsible for the following:

- (i) Preparing vegetation recommendations and specifications.
- (ii) Assuring proper reviews and approvals of vegetation measures before construction.
- (iii) Determining vegetation Operation and Maintenance (O&M) requirements if needed.
- (iv) Making recommendations to the contracting officer for the appointment of a COR for vegetation-related work.
- (v) Providing necessary technical guidance for NEPA documentation.

### G. District Conservationist (DC)—NRCS Local County/Parish Representative

The District Conservationist and the NRCS Local County and/or Parish Representatives are responsible for the following:

- (i) Leading an EWP local team to review needs of the district or county and/or parish.

## National Emergency Watershed Protection Program Manual

- (ii) Serving as the NRCS liaison between local units of government, agencies, Tribal governments, and others performing emergency work in the county or parish or on Tribal lands, including the following:
  - Serving, as needed, on a DSR team.
  - Developing information for establishing a “list of priorities” for the field office’s area of responsibility. (*See* 7 CFR Part 624.8(c)(3).)
- (iii) Serving as the local contact person for media requests in the county.
- (iv) Representing NRCS in interactions with landowners.

### H. Public Affairs Specialist

The Public Affairs Specialist is responsible for the following:

- (i) Preparing news releases regarding the EWP Program and current efforts by NRCS to address natural disaster recovery efforts.
- (ii) Web page information identifying NRCS EWP activities.

### I. Contracting Officer’s Representative (COR) and Government Representative (GR)

The Contracting Officer’s Representative and the Government Representative are responsible for the following:

- (i) Monitoring contract compliance and providing technical direction to inspectors.
- (ii) Acting as a liaison between the CO and the sponsor.
- (iii) Maintaining accurate written records on work progress.
- (iv) Assisting the CO with contract administration.

### J. Inspector

The Inspector is responsible for the following:

- (i) Communicating frequently with contractors for compliance with the plans and specifications.
- (ii) Providing onsite inspection of ongoing work.
- (iii) Maintaining accurate written records of work in progress as directed.
- (iv) Preparing “as built” plans.

### K. Local Sponsors

The Sponsoring Local Organizations (SLOs) are responsible for the following:

- (i) Providing a written request to the STC for assistance with appropriate documentation.
- (ii) Accepting requests for assistance from landowners.
- (iii) Obtaining the necessary real property rights, including any rights needed for the relocation of fences, bridges, etc.
- (iv) Obtaining a signed Form NRCS-ADS-78, Assurances relating to Real Property Acquisition, and a signed attorney’s opinion, as appropriate.
- (v) Obtaining the required Federal, State, Tribal, and local permits.
- (vi) Arranging for any necessary relocation of utilities.
- (vii) Providing the required local share of installation costs.
- (viii) Executing an operation and maintenance (O&M) agreement and ensuring compliance with the O&M plan as necessary.
- (ix) Helping to establish priorities for work.
- (x) Publicizing the availability of the EWP program.
- (xi) Participating on a DSR team as needed.
- (xii) Accepting the completed work for projects installed using locally awarded contracting procedures as appropriate.
- (xiii) Conducting outreach to underserved populations.

## **500.6 Requests for Waivers**

- A. If the STC determines that an unusual situation has occurred or that a special condition exists, they may request a waiver of the policy set forth in this manual.
- B. All requests for a waiver must be in writing and must be accompanied by a rationale and justification regarding the need for the waiver of EWP policy consistent with the statute. All requests for waiver will be submitted to the Deputy Chief for Programs for consideration. (*See 7 CFR Part 624.11.*)
- C. All requests for waivers must be in the best interest of the Federal Government.

## **PART 500 – INTRODUCTION**

### **SUBPART B – COORDINATION**

#### **500.10 Pre-Disaster Preparedness**

##### **A. Emergency Recovery Plan (ERP)**

Each STC will develop and maintain an EWP “Emergency Recovery Plan” (ERP) (*See* Part 505, Exhibits, Subpart A, Section 505.0) that contains procedures for implementation of emergency recovery measures should a disaster occur. The STC will review and update the ERP every other year or sooner if appropriate. The STC should solicit input from the following:

- (i) USDA Forest Service (USFS)
- (ii) USDA Farm Service Agency (FSA)
- (iii) USDA Rural Development (RD)
- (iv) USDI Fish and Wildlife Service (USFWS)
- (v) USDI Bureau of Land Management (BLM)
- (vi) USDI Bureau of Reclamation (BOR)
- (vii) Environmental Protection Agency (EPA)
- (viii) DOD Army Corps of Engineers (COE)
- (ix) DOC National Marine Fisheries Service (NMFS)
- (x) DHS Federal Emergency Management Agency (FEMA)
- (xi) Office of State Emergency Preparedness
- (xii) Tribal Historic Preservation Office
- (xiii) Tribal Councils (State and/or federally recognized)
- (xiv) State Historic Preservation Officer (SHPO)
- (xv) Conservation Districts
- (xvi) National Weather Service (NWS)
- (xvii) Other State and Tribal agencies

##### **B. Special Coordination**

Emergency recovery plans must include special attention to comply with the requirements of laws, executive orders, and other requirements as outlined in Section 500.4.

##### **C. Emergency Recovery Plan Content**

The emergency recovery plan should contain information to assist NRCS, the emergency action team (comprised of partners identified in Section 500.10A), and sponsors to efficiently and effectively implement EWP measures in the event of a natural disaster. Content should include but is not limited to:

- (i) Introduction
- (ii) List of primary and secondary agency contacts
  - Name and title
  - Agency
  - Mailing address
  - Telephone number (office, home, mobile)
  - FAX number
  - Email address
- (iii) Agency roles and responsibilities
- (iv) Sponsor responsibilities

- (v) Emergency recovery process
  - Description/flowchart
- (vi) Description of typical recovery measures
- (vii) Permits
  - Clean Water Act Section 404
  - State Water Quality
- (viii) Contracting procedures
  - GSA advantage contractors
- (ix) Environmental coordination
  - Endangered Species Act emergency consultation
  - Cultural resource consultation
  - Tribal consultation
  - Coastal Zone Management Area
  - Essential Fish Habitat
  - Wild and Scenic Rivers
- (x) Appendices of Emergency Recovery Plans
  - Sample DSR
  - Standard drawings
  - Sample project agreement

## **500.11 Disaster Alert and Response**

### **A. Presidential Declaration**

- (1) Under Public Law 93–288, when the President declares an area a “major disaster area,” all emergency work will be coordinated with FEMA or its designee. (*See* 7 CFR 624.5(a).)
- (2) However, FEMA will not coordinate NRCS work unless conflicts arise from adjacent sites where FEMA has responsibility. If, during the recovery period, FEMA transfers this responsibility to the Federal Regional Council or other authorized agency response effort, NRCS will be responsive to that council and/or organization.

### **B. State and Locally Declared**

In a State or locally declared disaster where the STC determines that a watershed impairment exists, NRCS will assume the lead in providing assistance and coordinating work with the appropriate State office of emergency preparedness, as well as other Federal, Tribal, or local agencies involved with administering emergency programs as appropriate, and as outlined in the ERP.

### **C. Impairment on Forest Service (USFS) Lands**

Where watershed impairment has been found to exist on land owned exclusively by the USFS, the USFS will determine the existence of the impairment, assume the lead, provide assistance, and coordinate work with the appropriate State office of emergency preparedness or other Federal, Tribal, or local agencies involved with emergency activities.

## **PART 501 — PROGRAM ADMINISTRATION**

### **Subpart A — General**

#### **501.0 Introduction**

#### **501.1 Electronic Disaster Reports**

#### **501.2 Project Code Numbers**

#### **501.3 Eligibility for Recovery Assistance**

#### **501.4 Limitations**

#### **501.5 Appeal Rights**

#### **501.6 Cost-Sharing**

#### **501.7 Exigency Situations**

### **Subpart B — Assistance**

#### **501.10 Requests for Assistance**

#### **501.11 Drawing Accounts**

#### **501.12 Fund Allocation and Usage**

## PART 501 - PROGRAM ADMINISTRATION

### SUBPART A - GENERAL

#### 501.0 Introduction

##### A. Overview

EWP assistance may be made available when a sudden watershed impairment occurs that creates an imminent threat to life or property as determined by the STC. The EWP Program provides recovery assistance consisting of emergency measures for repair and restoration of eligible sites.

##### B. Multi-State Disasters

The Regional Assistant Chiefs are responsible for providing coordination when multi-State disasters occur. When more than one region is involved, the Chief will assign the lead responsibility.

##### C. Personnel Management

If sufficient NRCS personnel are unavailable to carry out EWP activities, the STC will ensure that qualified assistance is obtained from other locations or sources to ensure that projects are completed within the timeframes specified in Part 502, Section 502.13 of this manual.

#### 501.1 Electronic Disaster Reports

STCs must submit an initial report electronically (*See* Part 505, Section 505.20 B) to the National EWP Program Manager within five (5) working days after any natural disaster event that may be eligible for EWP assistance.

#### 501.2 Project Code Numbers

CPTAD staff will assign a project number (5000 series) when the STC is notified that EWP funds are available for the specified natural disaster. One project number will be assigned for each disaster event. The STC may add digits for their own use if desired for the purpose of further defining the event, projects, or contracts. This number will be used to account for all funds expended on the project and for reporting accomplishments. The STC will provide a summary of all FA and TA expenditures in a final report for each project number.

#### 501.3 Eligibility for Recovery Assistance

##### A. General

EWP recovery assistance is made available to project sponsors.

##### B. Project Sponsor Eligibility

###### (1) A **project sponsor** is —

- (i) Any legal subdivision of a State government or a State agency including the following:
  - Cities
  - Counties or parishes

## National Emergency Watershed Protection Program Manual

- Towns
- Municipal Authorities
- Townships
- Soil and Water Conservation Districts
- And when chartered under state laws—
  - Levee Districts
  - Irrigation Districts
  - Drainage Districts
- (ii) Any Native American Tribe or Tribal organization as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
- (2) A project sponsor must —
  - (i) Have a legal interest in or responsibility for the areas threatened by a watershed emergency.
  - (ii) Be capable of obtaining necessary land rights and required permits.
  - (iii) Be capable of carrying out any operation and maintenance (O&M) responsibilities.
  - (iv) Administer contracting when part of a local agreement.

### C. Program Eligibility

The STC may provide assistance that is based on a determination that the current condition of the land or watershed impairment poses a threat to health, life, or property. Assistance includes EWP practices associated with removing threats to public health and safety and restoring the natural environment after natural disasters.

### D. Eligible Measures

- (1) NRCS will only provide assistance for measures that —
  - (i) Reduce threats to life or property from a watershed impairment, including sediment and debris removal.
  - (ii) Provide protection from additional flooding or soil erosion by retarding runoff.
  - (iii) Remove debris deposited by a natural disaster that would affect runoff or erosion.
  - (iv) Restore the hydraulic capacity to the natural environment to the maximum extent practical based upon pre-event conditions.
  - (v) Are economically, socially, and environmentally defensible and technically sound.
- (2) Measures must also —
  - (i) Provide immediate, adequate, and safe relief from the hazard (*See* 7 CFR 624.6(b)).
  - (ii) Be limited to only measures or practices necessary to reduce applicable threats to a stable condition and which approximate the conditions that existed before the impairment of the watershed.
  - (iii) Conform to all applicable statutes, published regulations, and Executive Orders.

### E. Prior Work

- (1) EWP funds will not be used to reimburse project sponsors for work carried out before a fund-obligating document has been signed by the sponsors **and** by NRCS. (*See* OMB Circular A-87, Attachment B, Item 32 “Pre-Award Costs.”)
- (2) Section 514.0(a) of the National Contracts, Grants, and Cooperative Agreements Manual (NCGCAM) provides that the following: “Detailed working arrangements **must** be established between the sponsors, the contracting local organization (CLO),



and the Natural Resources Conservation Service (NRCS) before starting construction or installation of the works of improvement in which NRCS has a financial interest. These arrangements must be set forth in a type of cooperative agreement called a project agreement.”

F. Repair of NRCS-Assisted Measures

EWP funds may be used to repair previously installed measures funded through Public Law 83–156, Public Law 83–566, Public Law 78–534, or Public Law 97–98 (RC&D) provided the following criteria are met:

- (i) All operation and maintenance responsibilities of the sponsors have been performed and are current.
- (ii) No engineering or structural deficiencies existed before the disaster that impacted the damaged portion of the structure.

## 501.4 Limitations

Ineligible Actions

EWP funds **will not** be used for any of the following:

- (i) Provide assistance on any Federal lands, unless adequate safeguards are followed to avoid augmentation of other Federal agencies as defined in GAO Principles of Federal Appropriations Law, Chapter 2–3: Transfer and Reprogramming. (*See* 7 CFR part 624.6(b)(2)(iv).)
- (ii) An exception to this prohibition is where the local sponsor controls an easement and has maintenance responsibilities; NRCS may provide EWP assistance as appropriate on Federal lands, (e.g., road rights-of-way).
- (iii) Provide recovery assistance for structural measures to a site more than twice in any 10-year period. (*See* 7 CFR part 624.6(b)(2)(i).) This limitation applies to the repair or protection of structural measures only. NRCS does not intend to limit the number of times that debris or similar obstruction can be removed in the same location due to a natural or constructed restriction in a waterway. The purchase of floodplain easements, where applicable, is the only EWP program option remaining when damage occurs a third time within a 10-year period following the original recovery work.
- (iv) Perform operation or maintenance (O&M), such as the periodic or routine work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally intended. (*See* 7 CFR 624.6(b)(2)(ii).)
- (v) Solve watershed or natural problems that existed prior to the natural disaster.
- (vi) Repair, rebuild, or maintain public or private transportation facilities, or correct damage to transportation facilities administered by Federal Highway Administration, Department of Transportation. (*See* 7 CFR 624.6(b)(2)(iii).)
- (vii) Remove threats to Federal-aid highways except where the Federal-aid highway protection would be incidental to other eligible protection.
- (viii) Work on levee projects where the stream has a drainage area greater than 400 square miles. In cases where a State Conservationist has a prior agreement with the U.S. Army Corps of Engineers (COE) that allows NRCS to provide assistance, NRCS may continue to provide assistance for the period of such agreement.
- (ix) Increase the pre-disaster capacity of a channel by constructing a new channel, enlarging the old channel, or relocating the stream. Modifying the channel based upon regional curve data which maintains the same channel capacity upstream

and downstream, and is necessary to stabilize the channel, is allowable.

Sediment and debris removal is not considered new construction.

- (x) Repair coastal erosion to beaches, dunes, and shorelines, including those along the Great Lakes.
- (xi) Landscaping practices exclusively for aesthetic purposes.
- (xii) Remove sediment or debris from reservoirs or debris basins.
- (xiii) Drill or modify wells, construct pipelines, install irrigation equipment, or purchase portable equipment.
- (xiv) Repair or rehabilitate structural, enduring, or long-life conservation practices or measures that are eligible for funding under the Emergency Conservation Program as defined in FSA Handbook 1–ECP. (*See* 7 CFR 624.6(b)(3)(i).) This prohibition does include removal of debris or sediment from farm fields.
- (xv) Repair or rehabilitation of management practices such as conservation tillage and other similar practices. (*See* 7 CFR 624.6(b)(2)(v).)

## 501.5 Appeal Rights

### A. Appealing EWP Determinations

- (1) Only NRCS decisions relating to eligibility for EWP are appealable. These decisions may be appealed in accordance with CFR Part 614 and 7 CFR 11, as applicable.
- (2) Decisions rendered under the EWP Program will be appealed in accordance with 7 CFR Part 614. (*See* Conservation Programs Manual (CPM), Part 510).

### B. Preliminary Technical Determinations

Program decisions issued for program eligibility are issued as final decisions. However, if the program decision is based on a technical determination, then the following appeal rights will be provided, if time allows:

- (i) Field review by the local NRCS decision maker (DC or designee).
- (ii) Reconsideration by the STC.
- (iii) Mediation.
- (iv) Request for expedited final review.

### C. Final Technical Determinations

- (1) Appeal to the STC.
- (2) Appeal to the National Appeals Division.

### D. Final Program Decisions

- (1) Notification of NRCS final decisions must be provided to the program participants (for EWP recovery measures the program participant is the sponsor).
- (2) If the final program decision is issued in the essence of time, and the decision is based on a technical determination on which no appeal rights were previously provided, then the following appeal rights will be provided on both the program decision and the technical determination—
  - (i) Appeal to the STC.
  - (ii) Mediation.
  - (iii) Appeal to the National Appeals Division.

### E. Non-Appealable Decisions

The following decisions are generally held not to be appealable:

- (i) Payment rates, payment limits, and cost-share percentages.

- (ii) NRCS program funding decisions.
- (iii) Technical standards and criteria that apply to all persons.
- (iv) Other matters of general program applicability.

F. Appealability Reviews

- (1) The NAD Director has the final authority on issues of appealability. (*See* CPM Part 510 Subpart A, paragraph 510.02(c), Appealability Reviews, or 7 CFR 11.6(a).)
- (2) A program participant may request that the NAD Director review the NRCS decision of non-appealability. A request must be filed not later than 30 calendar days after notification that an issue is not appealable. The NAD Director or designee will determine whether the issue is adverse to the participant, and thus appealable, or is a matter of general applicability, and not subject to appeal. The NAD Director's determination is final and not subject to review.
- (3) Upon NAD notification that a sponsor has requested an appealability review, the STC will file the agency response to the appropriate NAD region within 15 calendar days of receipt of the request for information.

## 501.6 Cost-Sharing

A. Rate

EWP funds may be used as follows:

- (i) EWP funds toward implementation of emergency measures may not exceed 75 percent of the construction costs of emergency measures, including work done to mitigate adverse environmental impacts as a result of the emergency measures.
- (ii) EWP funds for limited resource areas cost-sharing rate may not exceed 90 percent.

**Note:** Matching Federal to Federal funding for EWP recovery measures is prohibited as identified in the Appropriations Law, Volume II, Chapter 10, at section E.5.a(3) which states as follows:

“(3) Matching one grant with funds from another—

An important and logical principle is that neither the federal nor the nonfederal share of a particular grant program may be used by a grantee to match funds provided under another federal grant program, unless specifically authorized by law. In other words, a grantee may not (1) use funds received under one federal grant as the matching share under a separate grant, may not (2) use the same grantee dollars to meet two separate matching requirements. 56 Comp. Gen. 645 (1977); 47 Comp. Gen. 81 (1967); 32 Comp. Gen. 561 (1953); 32 Comp. Gen. 141 (1952); B-214278, January 25, 1985; B-212177, May 10, 1984; B-130515, July 20, 1973; B-229004-0. M., February 18, 1988; B-16201 –O. M., August 17, 1967. See also Common Rule § .24(b), 53 Fed. Reg. 8092. A contrary rule would largely nullify the cost-sharing objective of stimulating new grantee expenditures.

Normally, exceptions to the rule are in the form of express statutory authority. A prominent example is section 105(a)(9) of the Housing and Community Development Act of 1974, 42 U.S.C. § 5305(a) (9)...”

B. Removal of Buildings and Similar Structures

EWP Recovery Work: NRCS may purchase (based upon current value) and remove (which may include relocation or demolition) a structure when removing a building or

## National Emergency Watershed Protection Program Manual

similar structure is the least costly alternative and the buy-out is voluntary, and does not involve a lessee or tenant. The cost-share rate will not exceed 75 percent.

**Note:** The project sponsor is required to restrict future development within the property where the building or similar structure was located.

### C. Limited Resource Areas

- (1) To determine if an area qualifies for limited resource status, the most recently published Census Bureau data will be used in making the determination on a **county or parish basis**. To be considered a limited resource area, the county must meet **all three** of the following criteria:
  - (i) Housing values are less than 75 percent of the State housing value average.
  - (ii) Per capita income is 75 percent or less than the national per capita income.
  - (iii) Unemployment is at least twice the U.S. average over the past three years based upon the annual unemployment figures.
- (2) NRCS will use the most recent national census information available when determining housing values and per capita income.
- (3) In some cases, limited resource communities may exist within counties or parishes that do not qualify for the reduced cost share rate. The STC may request a waiver to allow the 90 percent cost-share rate in accordance with 7 CFR 624.11.
- (4) A community is defined as a residential area that shares common institutions such as churches, a post office, and stores.
- (5) In no case will limited resource status be granted for a single individual, household, or landowner.

### D. Trusts and Territories

The sponsor's share of the costs for the construction of EWP eligible measures may be waived for EWP measures to be installed in American Samoa, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands in accordance with 48 U.S.C. 1469(d), which requires notifying Congress. The waiver provision found in Section 500.5 may also be used when it is appropriate to consider a cost-share waiver.

### E. Sponsor Contribution

- (1) Sponsors may provide the non-Federal share of the cost-share in the form of the following:
  - (i) Cash
  - (ii) In-kind goods and/or services
  - (iii) Any combination of cash and in-kind goods and/or services
- (2) Examples of in-kind contributions may include —

Goods (Financial Assistance (FA)) – In-kind contributions that can be credited toward FA may be, but are not limited to, the following:

  - (i) Materials
  - (ii) Labor
  - (iii) Equipment
  - (iv) Debris disposal (e.g., chipping, burning, or tipping fees)
  - (v) Office space
  - (vi) Telephone lines

### F. Reimbursable Expenses to Sponsors

- (1) In cases where sponsors perform work that is typically a responsibility of NRCS, usually as part of a local agreement, NRCS should reimburse the sponsors. In those

cases, NRCS will work with sponsors to establish the reimbursable amount based upon available Technical Assistance.

- (2) Examples of reimbursable expenses to sponsors:
- (3) Services (Technical Assistance (TA))—Technical services typically done by NRCS can be reimburse using TA, but are not limited to the following:
  - (i) Planning
  - (ii) Design
  - (iii) Geotechnical and testing, etc.
  - (iv) Inspection
  - (v) Administration and contracting activities if performed under a locally led project agreement
  - (vi) Cultural resource identification and evaluation surveys and assessments
  - (vii) Endangered species biological assessments
- (4) Project sponsors are required to acquire all land rights and permits. Such activities do not qualify as in-kind contributions. A sponsor's administrative costs (such as attending meetings, obtaining land rights and permits, and reviewing documents and work progress) for carrying out their assigned responsibilities are not eligible as "in-kind" services.

#### G. Recovery Project Enhancement

If the project sponsor requests that enhancement or improvement of the EWP recovery measures go beyond that necessary to adequately repair or restore the impacted area, the additional cost of the enhancement or improvement requested by the project sponsor will be totally borne by the project sponsor. This additional cost will also include NRCS technical assistance on a reimbursable basis. (*See 7 CFR 624.6(b)(4), Increased level of protection.*)

#### H. Mitigation for Adverse Impacts of Recovery Measures

When recovery activities require mitigation, the additional costs will be included in the total costs of the EWP recovery measure and will be cost-shared with the sponsor based upon the cost-share amounts established for that project. Technical assistance expenditures that are the responsibility of NRCS associated with compliance with Federal or State requirements will typically be funded 100 percent by NRCS.

### 501.7 Exigency Situations

#### A. Definition

"Exigency" means those situations that demand immediate action to avoid potential loss of life or property, including situations where a second natural disaster event may occur shortly thereafter that could compound the impairment, cause new damages or the potential loss of life, if action to remedy the situation is not taken immediately.

#### B. Conditions

- (1) Exigency measures can include temporary solutions until permanent recovery measures can be designed and implemented.
- (2) A contracting officer with the appropriate warrant level will select and implement appropriate procurement methods to carry out the remedial work.
- (3) Under no circumstances will the exigency designation be used to circumvent the permitting process, or to circumvent full and open competition of Federal acquisitions and/or contracting.

## National Emergency Watershed Protection Program Manual

- (4) Funding will be based on actual exigency needs and the availability of funding.

### C. Funding

NHQ approval of funds must be obtained prior to initiating exigency actions.

### D. Authority to Proceed

- (1) The STC is authorized to perform eligible emergency measures to alleviate the “exigency” situation if —
  - (i) A DSR has been completed.
  - (ii) EWP funds have been allocated.
  - (iii) Action meets EWP eligibility requirements.
  - (iv) A determination is made that cost-share funds are available from the project sponsor.
  - (v) The procurement authority and procedures can be accomplished within the timeframe required.
  - (vi) The necessary land rights and permits have been acquired by the project sponsors.
  - (vii) All work on exigent situations will be completed within 10 days from the time the site is accessible, or when funding is approved.
- (2) Post-notification to other agencies will be made as rapidly as possible except in situations where advance notification is required by law.

## ART 501 — PROGRAM ADMINISTRATION

### SUBPART B — ASSISTANCE

#### 501.10 Requests for Assistance

##### A. Application

Project sponsors seeking EWP assistance must apply (See example letter NRCS-PDM-20A at Part 505, Section 505.20 A) to the STC in writing (*See* NEWPPM, Part 501, Section 501.7 for Exigency procedures). Project sponsors may use Form SF 424, Application for Federal Assistance, but must ensure that following information is provided:

- (i) A description of the problems encountered.
- (ii) Assistance needed, including the following:
- (iii) Nature of the problem
- (iv) Location
- (v) Scope of the problem
- (vi) Commitment by the sponsor to assume the following responsibilities—
  - Provide local cost-share
  - Land rights acquisition
  - Permits
  - Operations and Maintenance (O&M), if required
- (vii) A statement indicating that funds have either been exhausted or are insufficient to provide adequate recovery measures from the applicable hazards.
- (viii) A statement identifying any other State or Federal funding received or application submitted.

**Note:** Detailed information is not required at the time of the initial request. (*See* NRCS-PDM-20A.)

##### B. Time Limits

- (1) Project sponsors must submit a request for assistance within 60 days following the date of the natural occurrence that caused the watershed impairment, or after access to the site becomes available. (*See* NEWPPM, Part 501, Section 501.7 for exigency time limits.)
- (2) Waivers to this requirement may be requested by the STC for consideration by the Deputy Chief for Programs, when unusual situations exist, including the rationale and supporting documentation for such request. (*See* NEWPPM, Part 500, Section 500.6.)

#### 501.11 Drawing Accounts

##### A. Establishment of a Drawing Account

- (1) A drawing account must be established for each event when funding is available.
- (2) The STC or his or her designee must make a request for the establishment of a drawing account to fund EWP measures. All requests must be in writing and sent to the Director, CPTAD, or designee within 60 days of the sponsor's request for assistance. All requests must be based on the STC's estimate or on completed Damage Survey Reports (DSR). Requests must be submitted using the "Request for Establishment of an EWP Drawing Account" worksheet found in Part 505, Section 505.20 C.

##### B. Requesting Funds

- (1) When funding is available, CPTAD will establish a drawing account for the event and 100 percent of the FA will be allocated to the STC. A percentage of the technical assistance funding, usually 50 percent, will be allocated with the FA to complete DSRs, facilitate project design as well as initiate the contracts. The balance of the TA will remain in the State drawing account.
- (2) The STC may request additional TA from the State drawing account by providing information indicating the FA will be obligated in the near future. To expedite the allocation process, all requests should be made by e-mail or fax to the National EWP Program Manager.

## 501.12 Fund Allocation and Usage

### A. General

The Director, CPTAD, is responsible for all fund allocations associated with EWP recovery activities including financial assistance (FA) and technical assistance (TA).

### B. Availability

- (1) Funds are considered to be available to the STC when notification is received from NHQ.
- (2) Funds in a drawing account will remain available for 220 days, except for exigency situations the funds remain available for 10 days (*See* NEWPPM, Part 502, Section 502.13, Time Limits). Unused funds remaining after the specific timeframes will be returned to the National EWP Program Manager's account, unless a waiver has been granted in accordance with Part 500, Section 500.6.

### C. Recovery Work

- (1) Financial Assistance may only be used to fund for the cost of construction of the recovery measures, in accordance with Part 501, Section 501.6.
- (2) Technical Assistance funds shall not exceed 20 percent. The 20 percent is calculated based upon 75 percent of the installation costs (i.e., 90 percent in limited resource areas would only receive 20 percent based upon 75 percent of the installation costs) for EWP recovery measures. TA funds may be used in accordance with Part 501, Section 501.6 F and as follows—
  - (i) Salaries of NRCS employees related to the EWP activities
  - (ii) Travel
  - (iii) Overtime
  - (iv) Services:
    - Planning
    - Design
    - Geotechnical and testing, etc.
    - Inspection
    - Administration and contracting activities
    - Cultural resource investigation and evaluation surveys and assessments
    - Develop endangered species biological assessments
  - (v) Equipment and supplies
  - (vi) Renting temporary office space (emergency operations center)
  - (vii) Hiring part-time and non-USDA temporary staff
- (3) Part 501, Section 501.6 G, specifies when sponsors are required to reimburse TA.



## **PART 502 — PLANNING AND IMPLEMENTATION**

### **Subpart A — Planning**

#### **502.0 USDA Response**

#### **502.1 Damage Survey Reports (DSR)**

#### **502.2 Planning Considerations**

#### **502.3 Defensibility**

#### **502.4 Technical Adequacy**

#### **502.5 Cultural Resources**

### **Subpart B — Implementation**

#### **502.10 Agreements**

#### **502.11 Contracts**

#### **502.12 Land Rights and Permits**

#### **502.13 Performance Time Requirements**

#### **502.14 Priority Setting**

#### **502.15 Operation and Maintenance (O&M)**

## PART 502 — PLANNING AND IMPLEMENTATION

### SUBPART A — PLANNING

#### 502.0 USDA Response

##### NRCS Responsibilities

- (1) Immediately following a natural disaster event that may result in a watershed impairment, NRCS will conduct a rapid survey to determine the extent of disaster-related damages and provide CPTAD an estimate of eligible EWP recovery measures. (See Part 500, Section 500.1)
- (2) NRCS should invite potential sponsors to participate in the rapid survey.
- (3) If EWP eligibility is anticipated, transmit this information to NHQ using the “Electronic Disaster Report” in accordance with Part 501, Section 501.1.
- (4) Once a sponsor has requested assistance indicating they can fulfill all sponsor responsibility in accordance with Part 501, Section 501.10 A, NRCS will establish an interdisciplinary team to evaluate the site and complete the Damage Survey Report (DSR). Expertise recommended for the team should include the following disciplines:
  - (i) Personnel with EWP program experience
  - (ii) Engineering
  - (iii) Resource conservation and planning
  - (iv) Economics
  - (v) Biology
  - (vi) Cultural resources (archeology, anthropology, historic preservation)
  - (vii) Contracting
  - (viii) Other disciplines as required
- (5) Program eligibility determinations **may not** be delegated to any other entity.

#### 502.1 Damage Survey Report (DSR)

##### A. Use

- (1) The DSR (See Part 505, Section 505.20 C) is the primary document in the planning process to record all assessment, evaluation, and planning decisions for EWP recovery measures. A DSR must be completed for every site determined eligible for EWP assistance, and the report must include sufficient data and information to document eligibility in accordance with Part 501, Section 501.3. When all DSR’s have been completed for an event, a copy of the first and second page of each DSR must be provided to CPTAD.
- (2) DSR’s may be completed by either method:
  - (i) One eligible site per DSR.
  - (ii) Groups of similarly impaired sites within a limited geographic area per DSR.

##### B. Completing DSRs

DSR’s must be completed within 60 days of the availability of funding. Time extensions beyond 60 days may be granted to obtain information to prepare the DSR for events that are widespread or when access is limited.

##### C. Record Disposition

DSR’s for structural recovery measures will be maintained for a minimum of 10 years following the completion of EWP assistance to check for repetitive damage in accordance with GM 120,

Part 408 and Part 501, Section 501.4. All other files will be maintained in accordance with current record disposition requirements.

D. Sponsor Participation

A project sponsor's representative shall be provided an opportunity to participate on the DSR team. Project sponsors will assist in developing priorities for EWP implementation within their specific jurisdiction. (See Part 500, Section 500.5.)

## 502.2 Planning Considerations

A. Programmatic EIS

A programmatic environmental impact statement (PEIS) has been developed in compliance with the National Environmental Policy Act of 1969 (Public Law 91–190, 83 Stat. 852 (42 U.S.C. 4321 *et seq.*). The PEIS was developed, in part, to facilitate NEPA compliance at the NRCS State level by allowing tiering by the State for certain EWP measures and/or activities. The PEIS is available on the EWP Web site at the following URL:

[http://www.nrcs.usda.gov/programs/Env\\_Assess/EWP\\_FINALPEIS/EWP.html](http://www.nrcs.usda.gov/programs/Env_Assess/EWP_FINALPEIS/EWP.html).

B. Planning EWP Recovery Measures

Planning for recovery measures will include the following:

- (i) Use of construction techniques and equipment that avoid or minimize adverse environmental impacts and, to the extent that it is practical, preserves or improves the existing fish and wildlife habitat.
- (ii) Consideration and documentation of the effects of proposed emergency measures on natural and cultural resources through an environmental evaluation process.
- (iii) Compliance with NEPA, and all other local, State, Tribal, and Federal environmental laws (e.g., Endangered Species Act, Section 404 of the Clean Water Act, National Historic Preservation Act, as well as any applicable State and Tribal statutes; see the National Environmental Compliance Handbook).
- (iv) Measures that are designed and installed in accordance with NRCS technical standards, State, Tribal, and local laws and regulations, which protect public health and safety.

C. Alternative Recovery Measures

Alternative solutions *shall be considered* (e.g., structural, nonstructural, bioengineering, and floodplain easement). See the National Engineering Manual (NEM); the National Engineering Field Handbook (NEFH), Chapter 18, Bioengineering; Part 630 Hydrology National Engineering Handbook, Chapter 12, Hydrologic Effects of Land Use and Treatment and the National Environmental Compliance Handbook for more information on alternatives.

D. NEPA, Cumulative Effects, and Tiering

- (1) The PEIS analyzed the cumulative effects of recovery work as required by NEPA. The DSR has been revised to include an evaluation of all alternatives considered, including environmental, social, and economic considerations as well as estimates of the cost of project installation.
- (2) The STC and the sponsor are responsible for fully completing this form to identify the environmental effects or impacts (see DSR Attachment 1, Part 505, Section 505.20 C) that will result from the proposed action. In many cases, the effects of the proposed actions are sufficiently described in the PEIS. In such cases, no additional analysis is required for purposes of NEPA compliance because the site specific activities will be addressed, or tiered to, the PEIS. Additional analysis or documentation may be required, however, to comply

with the Endangered Species Act, National Historic Preservation Act, or other environmental requirements. If significant impacts are found as a result of the EWP environmental evaluation process and the proposed actions have not been sufficiently described in the PEIS, it is possible that an EA or EIS will be required.

- (3) For more information, refer to the NRCS policy for compliance with NEPA at 7 CFR 650, General Manual Title 190, Part 410, and the National Environmental Compliance Handbook, at Title 190, Part 610.

### **502.3 Defensibility**

A. EWP recovery measures meet the defensibility test if the combined beneficial effects exceed the combined adverse effects and is—

- (1) In compliance with Federal, State, Tribal, and local laws.
- (2) Acceptable to affected individuals and communities.
- (3) Effective in restoring and/or protecting the natural resources.
- (4) Complete with all necessary components included.
- (5) Effective in achieving the desired outcome.

B. Meeting the defensibility test includes the consideration of the following criteria or issues from the DSR, environmental assessment, or environmental impact statement—

- (1) Economic
- (2) Environmental
- (3) Social
- (4) Technical Feasibility

### **502.4 Technical Adequacy**

All recovery measures will correct the watershed impairment to either a stable or pre-disaster condition that will not cause increased adverse impacts, and must be technically adequate. All work subject to NRCS standards will be carried out in accordance with the National Engineering Manual (NEM) Section 210-501.24, the National Planning Procedures Handbook (NPPH), the National Agronomy Manual (NAM) and the Field Office Technical Guide (FOTG).

### **502.5 Cultural Resources**

A. General

- (1) Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires NRCS to take into account the effects of program and project activities on historic and cultural resources listed in or eligible for listing in the National Register of Historic Places. Compliance with Section 106 must occur through consultation with the appropriate State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) and Tribes. The implementing regulations that define the standard process for compliance may be found at 36 CFR Part 800 (36 CFR Parts 800.3–800.6).
- (2) Section 36 CFR 800.12 addresses emergencies and encourages agencies to develop procedures for use during emergency programs when responding to a disaster or emergency declared by the President, a Tribal government or State Governor when responding to other immediate threats to life or property. These procedures are to be developed in consultation with the SHPO and/or THPO, and federally recognized Tribes as part of each State Level Agreement and tribal consultation protocol or a stand-alone pre-disaster agreement (to be incorporated into the State's Emergency Recovery Plan). Where approved by the Advisory

## National Emergency Watershed Protection Program Manual

Council on Historic Preservation (ACHP), the procedures will satisfy Section 106 responsibilities. (See the National Cultural Resources Procedures Handbook, 190–601, NCRPH in <http://policy.nrcs.usda.gov/>).

### B. Costs

Costs associated with compliance with NHPA will be included in the total cost of the EWP measures, which may include resource surveys, recovery, and mitigation.

### C. Waivers from the NHPA

- (1) Section 110(j) of the NHPA, as implemented by 36 CFR Part 78, permits the Chief or the Chief's designee to waive requirements of the remainder of Section 110 (including development of agency emergency policy for Section 106 compliance) if it is determined that emergency action is necessary to ensure the immediate "preservation of human life or property."
- (2) The regulation at 36 CFR Part 78.3 states that a waiver may be invoked in only a limited range of circumstances involving a "major natural disaster or imminent threat to the national security." In such cases, the Chief or designee must notify the Secretary of the Interior, in writing, within 12 days, identifying the following:
  - (i) The major disaster necessitating the waiver.
  - (ii) The period of effect of the waiver (generally no more than 30 days after determining that disaster assistance is needed).
  - (iii) The parts of Section 110 that have been waived.
  - (iv) The geographic area to which the waiver applies.
  - (v) Measures to be taken to minimize harm to historic properties.
- (3) In all cases, information copies of this notice will also be forwarded to the ACHP, the SHPO, and the NRCS Federal Preservation Officer in NHQ.

## **PART 502 — PLANNING AND IMPLEMENTATION**

### **SUBPART B — IMPLEMENTATION**

#### **502.10 Agreements**

EWP project installation may be accomplished using contract and/or agreement actions. Project (cooperative) agreements may be used to install recovery measures.

##### **A. Project (Cooperative) Agreements**

- (1) NRCS and a sponsor can jointly install work under the EWP program using a project (cooperative) agreement. NRCS Policy regarding project agreements is found in the National Contracts, Grants and Cooperative Agreement Manual, NCGCAM, GM 120-510 through 517. Project (cooperative) agreements must define the contracting, and/or use of the sponsor's forces, cost-sharing, and administrative procedures that will be used to carry out the selected method of installation. The sponsors may choose to contract for, or perform using their own forces, engineering designs and cost estimates, installation of the EWP measures, and construction phase services.
- (2) NRCS must assure the quality of the design, contracting, and any construction carried out by project sponsors through design quality reviews or other means established by the State Conservationist (STC) and in accordance with the NRCS National Engineering Manual and the NCGCAM. Structural practices designed by non-NRCS personnel will be prepared under the direction and supervision of a Licensed Professional Engineer in the State where the measures will be installed. All design reviews will be in accordance with the National Engineering Manual, Part 501, including any procedures established by the State Conservation Engineer. Pre-design conferences for more complex measures must be held with appropriate representatives from NRCS, the sponsor(s), and the architectural and engineering (A&E) firm, if used.
- (3) The project (cooperative) agreement approach can extend the capacity of NRCS to provide assistance under the EWP program. It can also provide the sponsor with primary control of the installation process. And, it can match the level of cooperative work to the sponsor's capability and resources.
- (4) For example, the sponsor may lack or be unable to obtain contract administration assistance, but may have personnel, or be able to secure professional engineering and other technical services that are able to evaluate, design measures, and prepare contract documents. NRCS could then provide contract administration and construction assistance with the sponsor preparing the drawings and specifications. The cooperative agreement tailored to this type of capability would list the division of responsibilities.
- (5) The sponsor must provide information to confirm that they have the capability to perform the identified tasks as detailed in the cooperative agreement (See Part 501, Section 501.6 F and (g)). The STC will evaluate those capabilities before signing the agreement.
- (6) Regardless of the type of agreement that will be used, all project (financial assistance cooperative) agreements must meet the applicable requirements in the National Contracts, Grants and Cooperative Agreement Manual (NCGCAM), GM 120-510 through 517, as well as the applicable Federal Regulations as shown in Part 505, Section 505.31 of this Manual.

- (7) In addition, NRCS must ensure that all required prerequisites to signing a project agreement for the installation of recovery measures are met in accordance with NCGCAM 514.35.

B. Types of Agreements

- (1) **Force Account Project Agreements** — Force account agreements may be used for installation of recovery measures in accordance with Section 510.15 of the NCGCAM. This method is used when the sponsor performs the work using its own equipment and personnel. The Sponsor may supplement its own equipment through rental of relatively minor amounts of equipment. Because of these factors, the sponsors may install EWP measures by force account only under the conditions indicated in NCGCAM, 510-15(c). The NCGCAM provides applicable guidance and detail for the use of this type of project agreement in Sections 510 and 514.
- (2) **Performance of Work Project Agreements** — This type of project agreement may be used for EWP project installation in accordance with Section 510.17 of the NCGCAM. This is applicable if the works of improvement are to be cost-shared on a percentage basis. This work normally should be performed under a competitively awarded contract. However, the sponsors may be able to perform certain elements of the project work with their own forces or with contributed labor, equipment or materials in lieu of providing cash. The NCGCAM provides applicable guidance and detail for the use of this type of project agreement in Sections 510 and 514.
- (3) **Contracting Local Organization (CLO) Project Agreements** — This type of project agreement may be used for EWP project installation in accordance with Sections 510.10(b), 510.11, and 510.30 through 510.39 of the NCGCAM. This is applicable if the works of improvement are to be installed by the sponsor under a locally awarded contract and NRCS is to prepare the Invitation for Bid or to assist in administering the non-technical aspects (such as general provisions) of the contract (Section 510.40). This work should be performed under a competitively awarded contract. The NCGCAM provides applicable guidance and detail for the use of this type of project agreement in Sections 510 and 514.
- (4) **Federal Contract Project Agreements** — A Federal contract project agreement may be used for installation of recovery measures in accordance with Sections 510.10(b) and 510.11 of the NCGCAM. This is applicable if the works of improvement are to be installed by NRCS under a Federal contract. This work is normally performed under a competitively awarded contract. The NCGCAM provides applicable guidance and detail for the use of this type of project agreement in Sections 510 and 514.

## 502.11 Contracts

Installation of recovery measures can be accomplished using contracts. The sponsors or NRCS may contract for the installation of the recovery measures. NRCS policy at NCGCAM 510.10(a) states in part: “The practice of contracting with the lowest responsible bidder has almost always found to be the fairest, least expensive, and most satisfactory way to accomplish the work. Under this method, sealed bids are requested from prospective bidders by issuing formal invitation for bids.”

A. Contracting Local Organization (CLO)

- (1) Contracting local organization contracts are used when the CLO is performing contracting operations for the installation of NRCS financially assisted works of improvement. The contracting local organization (sponsor) is to arrange for, award,

and administer the contract for the acquisition of services and/or the installation of the recovery measures. Utilizing the sponsor's capacity to administer contracts enables the use of State, Tribal, or local contracting procedures. CLO contracting should be considered only when the contracting local organization has the necessary organizational capacity, expertise, and ability to successfully advertise, award, and administer contracts in accordance with the State and local procurement regulations as well as applicable Federal requirements.

- (2) The NCGCAM provides applicable guidance and detail for CLO contracts in Sections 510, 513, 516 and 517. As a minimum, all locally awarded contracts must comply with applicable State and local government procurement regulations as well as the Federal requirements for contracts awarded and administered by sponsors as set forth in 7 CFR 3016.36.

#### B. Federal Contracts

The Federal Acquisition Regulation (FAR) must be used when the method of contracting is a Federal contract. Federal contracts are used when project sponsors do not have the capacity to solicit, award, and/or administer a locally awarded contract. A warranted NRCS Contracting Officer can provide pertinent information and guidance for Federal contracting procedures. There is a wide variety of Federal contract types that may be used under the acquisition regulations. The selection of the appropriate type of contract, as well as the method of solicitation, depend on the specific situation. NRCS Federal procurement actions must comply with all applicable regulations, which include but are not limited to the following:

- (i) Federal Acquisition Regulation (FAR)
- (ii) Agricultural Acquisition Regulations
- (iii) NRCS Acquisition Regulations

### 502.12 Land Rights and Permits

#### A. Sponsor Responsibility

- (1) The sponsor is responsible for obtaining the following:
  - (i) Real property rights from affected landowners for the repair or restoration work to be performed on their property, including the use of eminent domain or other court action, if necessary.
  - (ii) Any related environmental and construction permits.
  - (iii) Location, removal, or relocation of utilities.
- (2) Section 511.3 of the National Contracts, Grants and Cooperative Agreement Manual (NCGCAM) lists additional responsibilities for the sponsors related to the acquisition of landrights for the installation of EWP project measures.

#### B. NRCS Employee Prohibition

NRCS employees are prohibited from obtaining land rights or acting as a representative of the sponsor. NCGCAM Section 511.2 provides additional detail and guidance with respect to what NRCS representatives must not do related to real property rights to be obtained by the sponsors.

#### C. Oral Permission of Land Rights

In cases where a landowner may agree to allow the construction on his or her property, but refuses to sign a written agreement, oral permission to the project sponsors can be accepted provided such permission is documented in a statement signed by the person



who receives the verbal permission and is witnessed by another party. An NRCS employee cannot be the witness for the statement. A representative of the local organization requesting the assistance may be the witness of the statement.

**D. Land Rights not Provided**

If adequate land rights cannot be obtained, EWP assistance will not be provided on that portion of the project. NRCS will not continue with the project if the area cannot be bypassed, unless a project of lesser scope will still provide adequate protection/recovery measures meeting all other EWP eligibility requirements.

**E. Assurance Relating to Real Property Acquisition**

Completion of Form NRCS-ADS-78, Assurances Relating to Real Property Acquisition, and supporting attorney's opinion as applicable, must precede the NRCS signing of the project (Cooperative) agreement. Also see NCGCAM 511.3(a)(3)(vii).

### **502.13 Performance Time Requirements**

**A. General**

- (1) EWP activities are performed under emergency conditions and NRCS actions will be governed accordingly and become the first priority until all recovery measures have been completed.
- (2) All work will be scheduled for completion within 220 days from the date that funding is made available. The only exceptions will be for "exigency" situations, which have a 10-day time limit from the date that the site is accessible or when funding is made available.

**B. Extensions**

Performance time extensions may be granted by the Deputy Chief for Programs, to ensure that all limiting concerns can be properly addressed, such as —

- (i) Fish and wildlife migration
- (ii) Nesting seasons or other seasonal restrictions
- (iii) Acquisition of native plant materials
- (iv) Limited construction season because of climatic conditions
- (v) The magnitude of the disaster is such that the work cannot be completed within the time constraints
- (vi) Permitting issues
- (vii) Consideration of historic resources
- (viii) Endangered species requirements

**C. Extension request**

The STC may request an extension of performance time, in writing and must explain why the request is in the best interest of the Federal Government.

### **502.14 Priority Setting**

**A. General**

Priorities will be established for installing the EWP measures so that critical work will receive prompt attention. In President-declared disasters, NRCS must coordinate with FEMA officials or the appropriate State agency having emergency recovery responsibilities.

**B. Funding priorities for recovery measures**

NRCS will provide EWP assistance based on the following criteria, which are listed in order of importance (*See* 7 CFR 624.8(c)(3))—

- (i) Exigency situations.
- (ii) Sites where there is a serious, but not immediate threat to human life.
- (iii) Sites where buildings, utilities, or other important infrastructure components are threatened.
- (iv) Other funding priorities established by the Chief of NRCS.

**C. Considerations**

When reviewing paragraph B above, NRCS will take into account the following resources since they may affect the priority, including, but not limited to the following—

- (i) Sites inhabited by federally-listed threatened and endangered species or containing federally designated critical habitat where the species or the critical habitat could be jeopardized, destroyed, or adversely modified without the recovery measures.
- (ii) Sites that contain or are in the proximity to cultural sites listed on the National Register of Historic Places where the listed resource would be jeopardized if the recovery measures were not installed.
- (iii) Sites where prime farmland supporting high value crops is threatened.
- (iv) Sites containing wetlands that would be damaged or destroyed without the recovery measures.
- (v) Sites that have a major affect on water quality.
- (vi) Sites containing unique habitat, including but not limited to, areas inhabited by State-listed threatened and endangered species, fish and wildlife management areas, or State-identified sensitive habitats.

## **502.15 Operation and Maintenance (O&M)**

A. On a case-by-case basis, NRCS will determine the need for EWP O&M plans and agreements. O&M activities will be in accordance with the National Operation and Maintenance Handbook.

B. The project sponsor will be required to sign an O&M Agreement and carry out the O&M plan for the entire period prescribed. Adequate land rights must have been or must be obtained in order for the project sponsors to carry out their O&M responsibilities.

C. Project sponsors may contract completion of the O&M plan, but, the project sponsors will retain the legal responsibility.

## **PART 503 — POST-DISASTER ACTIVITIES**

### **SUBPART A — GENERAL**

#### **503.0 Follow-up Coordination**

#### **503.1 Final Report**

#### **503.2 EWP Accomplishment and Benefits Database**

#### **503.3 EWP Performance Measures**

## **PART 503 - POST-DISASTER ACTIVITIES**

### **SUBPART A — GENERAL**

#### **503.0 Follow-up Coordination**

STCs should meet with other agencies, sponsors, partners, and landowners prior to submission of the Final Report (*See* Part 503, Section 503.1) to discuss the activities and any opportunities for future improvement of program delivery. Recommendations for improvement will be included in the Final Report.

#### **503.1 Final Report**

The STC will submit a final report (*See* Part 505, Section 505.20 E) to the Director, CPTAD, upon completion of all EWP work for each numbered project. Final Reports will be considered overdue after 90 days from the project completion date. The information required will be taken from the DSRs prepared for the natural disaster or gathered through the administration of the contract or cooperative agreement. This report must describe the following:

- (1) Emergency recovery measures installed
- (2) Benefits provided
- (3) Excess funds returned to NHQ

The report may be transmitted electronically.

#### **503.2 EWP Accomplishment and Benefits Database**

The Director, CPTAD, will maintain a database to evaluate the effectiveness of the EWP program. The database will include information from the final reports submitted in accordance with Part 503, Section 503.1.

#### **503.3 EWP Performance Measures**

EWP performance measures have been established and efficiency and long-term measures will be tracked using the Final Report. The performance measures include:

- (1) **Annual Measures**
  - (i) Percent of NRCS State Office Emergency Recovery Plans that meet national standards. Target = 100 percent.
  - (ii) Percent of EWP-eligible watershed damage restored to pre-disaster condition. Target = 100 percent.
- (2) **Efficiency Measures**
  - (i) Increase percentage of local agreements administered by sponsors. The baseline year is 20 percent in 2004, 27 percent in 2006, and 30 percent in 2007.
  - (ii) Increase percentage of recovery for natural disaster events completed within required timeframe. The baseline year is 95 percent in 2004, 97 percent in 2006, and 98 percent in 2007.
  - (iii) Meet or exceed 5000 acres protected within watersheds per \$1 million.
- (3) **Long-term Measures**
  - (i) Reduce the percent of project sites requiring EWP restoration more than twice in a 10-year period. The proposed target is 0 percent in 2015.

## National Emergency Watershed Protection Program Manual

- (ii) Reduce the percent of completed EWP measures that require remedial repair. The baseline year is 2 percent for 2004 and 1 percent for 2005-2010.
- (iii) Reduce the average number of days from allocation of EWP dollars to state offices and completion of local disaster recovery projects to 330 days in FY 2006-2007.

**PART 504 – RESERVED**

## **PART 505 – EXHIBITS**

### **SUBPART A - PLANS**

**505.0 State Emergency Recovery Plan (ERP)**

**505.1 Reserved**

**505.2 Reserved**

**505.3 Reserved**

**505.4 Reserved**

**505.5 Reserved**

**505.6 Reserved**

### **SUBPART B - DEFINITIONS**

**505.10 Definition of Terms**

**505.11 Explanation of Acronyms**

### **SUBPART C - FORMS**

**505.20 EWP Recovery Measure Forms**

**505.21 Reserved**

### **SUBPART D - STATUTES AND REGULATIONS**

**505.30 Statutory Authority**

**505.31 Applicable Regulations**

## **PART 505 - EXHIBITS**

### **SUBPART A - PLANS**

**505.0 State Emergency Response Plan (ERP)**

**505.1 Reserved**

**505.2 Reserved**

**505.3 Reserved**

**505.4 Reserved**

**505.5 Reserved**

**505.6 Reserved**



**505.10 Definitions of Terms**

<b>Terms</b>	<b>Definitions</b>
Committed Funds	<p>EWP funds are considered committed when NRCS has agreed to fund a measure, States have been notified, and the sponsoring local organization has been advised, in writing, that they may proceed to acquire land rights and/or permits. Committed funds may include the following:</p> <ul style="list-style-type: none"> <li>• Financial assistance funds committed to the specific project, but held in a State Drawing Account.</li> <li>• Financial assistance funds committed to the specific sponsor within the project area.</li> <li>• Financial assistance funds committed to the specific project that has been allocated to the State.</li> </ul>
Consultation on Cultural Resources	<p>Consultation is the legal responsibility of Federal agencies to seek advice, guidance and counsel from and to confer with authorized parties on program, project, and policy issues. These issues include all matters related to cultural resources compliance. Authorized parties include, but are not limited to, State Historic Preservation Officers, American Indian Tribes, Tribal Historic Preservation Officers, project partners, landowners, the Departmental Consulting Archeologist, the Advisory Council on Historic Preservation and interested members of the public. For additional information on consultation on cultural resources see the National Cultural Resources Procedures Handbook at <a href="http://policy.nrcs.usda.gov/scripts/lpsiis.dll/H/H_190_601_Content.htm">http://policy.nrcs.usda.gov/scripts/lpsiis.dll/H/H_190_601_Content.htm</a>, especially Subpart G, Appendices. Special guidance on NRCS responsibilities for cultural resources consultation with American Indian Tribes is found in Appendix 601.62 "Guidance on NRCS Cultural Resources Consultation with American Indian Tribes in Accordance with the National Historic Preservation Act of 1966 and Other Related Authorities"</p>
Cultural Resources	<p>Cultural Resources, in NRCS, are considered equivalent to "historic properties" as defined by the Advisory Council on Historic Preservation regulations for compliance with Section 106 of the NHPA. They include any prehistoric or historic district, site, building, structure or object listed in or eligible for listing in the National Register of Historic Places (maintained by the Secretary of the Interior). They also include all records, artifacts and physical remains associated with the historic properties. They may consist of the traces of all of the past activities and accomplishments of people. Cultural resources that are also protected under other authorities (such as the American Indian Religious Freedom Act) include (1) tangible traces such as districts, sites, buildings, structures and objects; (2) less tangible traces such as dance</p>

# National Emergency Watershed Protection Program Manual

Terms	Definitions
	forms, aspects of folk life, landscapes and vistas, and cultural or religious practices; (3) historical documents; (4) and some landscapes, vistas, cemeteries (if they have historic or cultural value) and lifeways. See the NRCS National Cultural Resources Procedures Handbook at <a href="http://policy.nrcs.usda.gov/scripts/lpsiis.dll/H/H_190_601_Content.htm">http://policy.nrcs.usda.gov/scripts/lpsiis.dll/H/H_190_601_Content.htm</a> for further discussion of cultural resources and NRCS responsibilities.
Defensibility	<p>The selected alternative is defensible if the combined beneficial effects exceed the combined adverse effects and it is as follows:</p> <ul style="list-style-type: none"> <li>• In compliance with Federal, State, Tribal, and local laws.</li> <li>• Acceptable to affected individuals and communities.</li> <li>• Effective in restoring and/or protecting the natural resources.</li> <li>• Complete with all necessary components included.</li> <li>• Efficient in achieving the desired outcome.</li> </ul> <p>This includes the consideration of the following criteria or issues from the DSR:</p> <ul style="list-style-type: none"> <li>• Economic</li> <li>• Environmental</li> <li>• Social</li> <li>• Technical Feasibility</li> </ul>
Drawing Account	Funding account held at NHQ that is committed to a specific EWP project in a State. Funds are withdrawn upon request by the STC.
DSR Team	An interdisciplinary team that determines and documents eligibility for EWP assistance.
Emergency Measures	Actions implemented in order to safeguard life and property by removing or reducing hazards created by a natural disaster.
Exigency	A situation that demands immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damages or the potential loss of life if action to remedy the situation is not taken immediately.

# National Emergency Watershed Protection Program Manual

Terms	Definitions
Federal-Aid Highway	Any public highway, roadway, or other road eligible for the Emergency Relief Program administered by the Federal Highway Administration of the Department of Transportation. The Emergency Relief (ER) Program will help State and local highway agencies pay the unusually heavy expenses of repairing serious damage to the Federal-aid system resulting from President-declared natural disasters or catastrophic failure.
Imminent Threat	A subsequent natural occurrence event that would cause significant damage to property and/or threaten human life.
Improved Property	Permanent improvements such as homes, businesses, farmsteads, roads, bridges, utilities, and enduring conservation practices.
Installation Costs	All costs associated with the physical application of a recovery measure and include site preparation, earth work, and structural materials, including costs associated with required mitigation.
Levee	An embankment built to prevent high water from flooding the adjacent land.
Limited- Resource Area	<p>An area (usually a county or parish), where all of the following are present:</p> <ul style="list-style-type: none"> <li>• Housing values are less than 75 percent of the State housing average value.</li> <li>• Per capita income is 75 percent or less than the median income of the Nation.</li> <li>• Unemployment is twice the U.S. average over the past three years based upon the most recent national census information available.</li> </ul> <p>A unit of government or a group of people within a bounded geographical area who interact within shared institutions and who possess a common sense of interdependence and belonging where—</p> <ol style="list-style-type: none"> <li>(1) Housing values are less than 75 percent of the State housing value average.</li> <li>(2) Per capita income is 75 percent or less than the National per capita income.</li> <li>(3) Unemployment is at least twice the U.S. average over the past three years based upon the annual unemployment figures.</li> </ol> <p>NRCS will use the most recent National census information available when determining (1) and (2) above.</p>
Natural Occurrence	Includes, but is not limited to, floods, fires, windstorms, hurricanes, ice storms, typhoons, tornadoes, earthquakes, volcanic actions, slides, and drought.

# National Emergency Watershed Protection Program Manual

<b>Terms</b>	<b>Definitions</b>
Obligated Funds	EWP funds are considered obligated when a project agreement is signed for a locally awarded contract (or force account) or a Federal contract is awarded.
Operation and Maintenance	See National O&M Manual.
Outreach	Ensuring that the public is informed of the availability of the EWP program and its purpose of supplying assistance in recovery work.
Partner	An entity that works in conjunction with NRCS and is responsible for, or involved in, local emergency activities.
Project Sponsor	A State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required.
Recovery Measure	Actions that restore the natural resources to either a stable or pre-disaster condition, that will not cause increased adverse impacts, and are technically adequate.
Service Costs	Costs associated with measure preparation and quality assurance and include field surveys, design, inspection, and contract award/administration.

Terms	Definitions
Tiering	<p>40 CFR 1508.28 Tiering.</p> <p>"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:</p> <p>(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.</p> <p>(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.</p>
Total Project Cost	<p>The total cost of installing a recovery measure: installation costs plus service costs. This does not include sponsor responsibilities (e.g., permits and land rights).</p>
Watershed Emergency	<p>Adverse impacts to resources exist when a natural occurrence causes a sudden impairment of a watershed and creates an imminent threat to life or property.</p>
Watershed Impairment	<p>The situation that exists when the ability of a watershed to carry out its natural functions is reduced to the point where an imminent threat to health, life, or property is created. This impairment can also include sediment and debris deposition in floodplains and upland portions of the watershed.</p>

## 505.20 EWP Recovery Measure Forms

### A. Sample Letter

<<Enter the State Conservationist Name>> <<Enter Date>>  
Natural Resources Conservation Service  
<<Enter the Street Address for the NRCS State Office>>  
<<Enter City, State Zip+4>>

Dear <<STC Name>>:

We request Federal assistance under the provisions of Section 216 of the Flood Control Act of 1950, Public Law 81-516 or Section 403 of the Agricultural Credit Act of 1978, Public Law 95-334, to restore damages sustained in <<County Name>> County by storms of <<Enter name and/or type of disaster that occurred>> on <<Enter date disaster occurred>>. This work is needed to safeguard lives and property from an imminent hazard of <<enter hazard type>>.

We understand, as sponsors of an Emergency Watershed Protection project that our responsibilities will include acquiring land rights and any permits needed to construct, and if required, to operate and maintain the proposed measures. We are prepared to provide local <<enter type of local contribution>> of the cost of construction work in dollars or in-kind services.

The names, addresses, and telephone numbers of the administrative and technical contact persons in our organization are as follows:

<<enter Name, Title, Address, Telephone, FAX of Sponsor's Representative>>

Please contact him or her for any additional information that you might need in assessing our request.

Sincerely,

# National Emergency Watershed Protection Program Manual

## B. Electronic Disaster Report

UNITED STATES DEPARTMENT OF AGRICULTURE		NRCS-PDM-21							
Natural Resources Conservation Service		10/2004							
<h2 style="margin: 0;">Electronic Disaster Report</h2> <h3 style="margin: 0;">Emergency Watershed Protection Program</h3>									
State: _____ —	Initial Report: <input type="checkbox"/>	Follow-up Report: <input type="checkbox"/>	Date of this Report: _____ —						
Contact Information:		Disaster Information:							
Name: _____ —		Disaster Name: _____ —							
Address: _____ —		Community Affected: _____ —							
Telephone: _____ —		Disaster Date: _____ —							
Disaster Analysis									
County Affected: _____ —	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="3" style="padding: 2px;">Severity</th> </tr> <tr> <td style="padding: 2px;">Severe</td> <td style="padding: 2px;">Moderate</td> <td style="padding: 2px;">Light</td> </tr> </table>			Severity			Severe	Moderate	Light
Severity									
Severe	Moderate	Light							
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
Additional Information									
Damage Assessment:									

## National Emergency Watershed Protection Program Manual

<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
EWP Actions to Date:
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
Urgent Problems and/or Needs (Additional Comments):
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
Limited Resource Communities Affected:
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
Human Interest Examples:
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
Projects (such as PL-566, RC&D) That Have Helped Limit the Damage
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

Reproduce Locally



National Emergency Watershed Protection Program Manual

C. Damage Survey Report (DSR)

United States Department of Agriculture  
Natural Resources Conservation Service

OMB No. 0578-0030  
NRCS-PDM-20

**DAMAGE SURVEY REPORT (DSR)**  
**Emergency Watershed Protection Program – Recovery**

**Section 1A**

Date of Report: \_\_\_\_\_

DSR Number: \_\_\_\_\_

Project Number: \_\_\_\_\_

NRCS Entry Only

Eligible: YES \_\_\_\_\_ NO \_\_\_\_\_

Approved: YES \_\_\_\_\_ NO \_\_\_\_\_

Funding Priority Number (from Section 4) \_\_\_\_\_

Limited Resource Area: YES \_\_\_\_\_ NO \_\_\_\_\_

**Section 1B Sponsor Information**

Sponsor Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

**Section 1C Site Location Information**

County: \_\_\_\_\_ State: \_\_\_\_\_ Congressional District: \_\_\_\_\_

Latitude: \_\_\_\_\_ Longitude: \_\_\_\_\_ Section: \_\_\_\_\_ Township: \_\_\_\_\_

Range: \_\_\_\_\_

UTM Coordinates: \_\_\_\_\_

Drainage Name: \_\_\_\_\_

Reach: \_\_\_\_\_

Damage Description:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# National Emergency Watershed Protection Program Manual

## Section 1D Site Evaluation

All answers in this Section must be YES in order to be eligible for EWP assistance.

Site Eligibility	YES	NO	Remarks
Damage was a result of a natural disaster?*			
Recovery measures would be for runoff retardation or soil erosion prevention?*			
Threat to life and/or property?*			
Event caused a sudden impairment in the watershed?*			
Imminent threat was created by this event?**			
For structural repairs, not repaired twice within ten years?***			
Site Defensibility			
Economic, environmental, and social documentation adequate to warrant action? (Go to pages 3, 4, 5 and 6 ***)			
Proposed action technically viable? (Go to Page 9 ***)			

Have all the appropriate steps been taken to ensure that all segments of the affected population have been informed of the EWP program and its possible effects? YES \_\_\_\_\_ NO \_\_\_\_\_

Comments: \_\_\_\_\_

\* Statutory

\*\* Regulation

\*\*\* DSR Pages 3 through 6 and 9 are required to support the decisions recorded on this summary page. If additional space is needed on this or any other page in this form, add appropriate pages.

DSR No. \_\_\_\_\_

Continued Page 1 of 14  
Approved 7/2005

## National Emergency Watershed Protection Program Manual

### Section 1E Proposed Action

Describe the preferred alternative from Findings: Section 5 A:

Total installation cost identified in this DSR: Section 3: \$ \_\_\_\_\_

### Section 1F NRCS State Office Review and Approval

Reviewed By: \_\_\_\_\_ Date Reviewed: \_\_\_\_\_  
State EWP Program Manager

Approved By: \_\_\_\_\_ Date Approved: \_\_\_\_\_  
State Conservationist

### PRIVACY ACT AND PUBLIC BURDEN STATEMENT

NOTE: The following statement is made in accordance with the Privacy Act of 1974, (5 U.S.C. 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is 7 CFR 624 (EWP) and Section 216 of the Flood Control Act of 1950, Public Law 81-516, 33 U.S.C. 701b-1; and Section 403 of the Agricultural Credit Act of 1978, Public Law 95-334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104-127, 16 U.S.C. 2203. EWP, through local sponsors, provides emergency measures for runoff retardation and soil erosion control to areas where a sudden impairment of a watershed threatens life or property. The Secretary of Agriculture has delegated the administration of EWP to the Chief of NRCS on state, tribal and private lands.

Signing this form indicates the sponsor concurs and agrees to provide the cost-share to implement the EWP recovery measure(s) determined eligible by NRCS under the terms and conditions of the program authority. Failure to provide a signature will result in the applicant being unable to apply for or receive a grant the applicable program authorities. Once signed by the sponsor, this information may not be provided to other agencies. IRS, Department of Justice, or other State or Federal Law Enforcement agencies, and in response to a court or administrative tribunal.

The provisions of criminal and civil fraud statutes, including 18 U.S.C. 286, 287, 371, 641, 651, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729 may also be applicable to the information provided. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0578-0030. The time required to complete this information collection is estimated to average 117/1.96 minutes/hours per response, including the time for reviewing instructions, searching existing data sources, field reviews, gathering, designing, and maintaining the data needed, and completing and reviewing the collection information.

### USDA NONDISCRIMINATION STATEMENT

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write USDA, Director of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202)720-6382 (TDD). USDA is an equal opportunity provider and employer.

### Civil Rights Statement of Assurance

The program or activities conducted under this agreement will be in compliance with the nondiscrimination provisions contained in the Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, Section 504 or the Rehabilitation Act of 1973, Title IX of the Amendments of 1972, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990. They will also be in accordance with regulations of the Secretary of Agriculture (7 CFR 15, 15a, and 15b), which provide that no person in the United States shall on the grounds of race, color, national origin, gender, religion, age or disability, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the U.S. Department of Agriculture or any agency thereof.

DSR NO: \_\_\_\_\_

2 of 14  
Approved 7/2005

# National Emergency Watershed Protection Program Manual

## Section 2 Environmental Evaluation

2A Resource Concerns	2B Existing Condition	2C Alternatives		
		Proposed Action	No Action	Alternative
		2D Effects of Alternatives		
Soil		Proposed Action	No Action	Alternative
Water				
Downstream water rights				
Air				
Plant				
Animal				
Other				

DSR No. \_\_\_\_\_

Page 3 of 14  
Approved 7/2005

**Section 2E Special Environmental Concerns**

Resource Consideration	Existing Condition	Alternatives and Effects		
		Proposed Action	No Action	Alternative
Clean Water Act Waters of the U.S.				
Coastal Zone Management Areas				
Coral Reefs				
Cultural Resources				
Endangered and Threatened Species				
Environmental Justice				
Essential Fish Habitat				
Fish and Wildlife Coordination				
Floodplain Management				

DSR NO: \_\_\_\_\_

Page 4 of 14  
Approved 7/2005

# National Emergency Watershed Protection Program Manual

## Section 2E Special Environmental Concerns (continued)

Resource Consideration	Existing Condition	Alternatives and Effects		
		Proposed Action	No Action	Alternative
Invasive Species				
Migratory Birds				
Natural Areas				
Prime and Unique Farmlands				
Riparian Areas				
Scenic Beauty				
Wetlands				
Wild and Scenic Rivers				

Sections 2A-E Completed By: \_\_\_\_\_

Date: \_\_\_\_\_

DSR No. \_\_\_\_\_

Continued 4 of 14  
Approved 7/2005

## Section 2F Economic

**This section must be completed by each alternative considered (attach additional sheets as necessary).**

Item	Future Damages (\$)	Damage Factor (%)	Near Term Damage Reduction
Properties Protected (Private)			
Properties Protected (Public)			
Business Losses			
Other			
Total Near Term Damage Reduction \$			
Net Benefit (Total Near Term Damage Reduction minus Cost from Section 3) \$			

Section 2F Completed By: \_\_\_\_\_ Date: \_\_\_\_\_

DSR NO: \_\_\_\_\_

Page 5 of 14  
Approved 7/2005

**Section 2G Social Consideration**

**This section must be completed by each alternative considered (attach additional sheets as necessary).**

Item	YES	NO	Remarks
Has there been a loss of life as a result of the watershed impairment?			
Is there the potential for loss of life due to damages from the watershed impairment?			
Has access to a hospital or medical facility been impaired by watershed impairment?			
Has the community as a whole been adversely impacted by the watershed impairment (life and property ceases to operate in a normal capacity)			
Is there a lack or has there been a reduction of public safety due to watershed impairment?			

Section 2G Completed By: \_\_\_\_\_ Date: \_\_\_\_\_

DSR No. \_\_\_\_\_

Page 6 of 14  
Approved 7/2005



# National Emergency Watershed Protection Program Manual

## Section 2H Group Representation Information

**This section is completed only for the preferred alternative selected.**

Group Representation	Number
American Indian/Alaska Native Female Hispanic	
American Indian/Alaska Native Female Non-Hispanic	
American Indian/Alaska Native Male Hispanic	
American Indian/Alaska Native Male Non-Hispanic	
Asian Female Hispanic	
Asian Female Non-Hispanic	
Asian Male Hispanic	
Asian Male Non-Hispanic	
Black or African American Female Hispanic	
Black or African American Female Non-Hispanic	
Black or African American Male Hispanic	
Black or African American Male Non-Hispanic	
Hawaiian Native/Pacific Islander Female Hispanic	
Hawaiian Native/Pacific Islander Female Non-Hispanic	
Hawaiian Native/Pacific Islander Male Hispanic	
Hawaiian Native/Pacific Islander Male Non-Hispanic	
White Female Hispanic	
White Female Non-Hispanic	
White Male Hispanic	
White Male Non-Hispanic	
Total Group	

Census tract(s) \_\_\_\_\_

Section 2H Completed By: \_\_\_\_\_ Date: \_\_\_\_\_

DSR No. \_\_\_\_\_

Page 7 of 14  
Approved 7/2005

**Section 2I Consultation/ Coordination**

Required consultation or coordination between the lead agency and/or the RFO and another governmental unit including tribes:

Easements, permissions, or permits:

Mitigation Description:

Agencies, persons, and references consulted, or to be consulted:

DSR No. \_\_\_\_\_

Page 8 of 14  
Approved 7/2005

**Section 3 Engineering Cost Estimate****This section must be completed by each alternative considered (attach additional sheets as necessary).**

Proposed Recovery Measure (including mitigation)	Quantity	Units	Unit Cost (\$)	Amount (\$)
Total Installation Cost (Enter in Section 1F) \$				

**Unit Abbreviations:**

AC Acre	LS Lump Sum
CY Cubic Yard	SF Square Feet
EA Each	SY Square Yard
HR Hour	TN Ton
LF Linear Feet	Other (Specify)

Section 3 Completed By: \_\_\_\_\_ Date: \_\_\_\_\_

DSR NO. \_\_\_\_\_

Page 9 of 14  
Approved 7/2005

# National Emergency Watershed Protection Program Manual

## Section 4 NRCS EWP Funding Priority

Complete the following section to compute the funding priority for the recovery measures in this application (see instructions on page 14).

Priority Ranking Criteria	Yes	No		Ranking Number Plus Modifier
1. Is this an exigency situation?				
2. Is this a site where there is serious, but not immediate threat to human life?				
3. Is this a site where buildings, utilities, or other important infrastructure components are threatened?				
4. Is this site a funding priority established by the NRCS Chief?				
The following are modifiers for the above criteria			Modifier	
a. Will the proposed action or alternatives protect or conserve federally-listed threatened and endangered species or critical habitat?				
b. Will the proposed action or alternatives protect or conserve cultural sites listed on the National Register of Historic Places?				
c. Will the proposed action or alternatives protect or conserve prime or important farmland?				
d. Will the proposed action or alternatives protect or conserve existing wetlands?				
e. Will the proposed action or alternatives maintain or improve current water quality conditions?				
f. Will the proposed action or alternatives protect or conserve unique habitat, including but not limited to, areas inhabited by State-listed species, fish and wildlife management area, or State identified sensitive habitats?				

Enter priority computation in Section 1A, NRCS Entry, Funding priority number.

Remarks:

DSR No. \_\_\_\_\_

**Section 5A Findings**

**Finding:** Indicate the preferred alternative from Section 2 (Enter from Section 1E):

*I have considered the effects of the action and the alternatives on the Environmental Economic, Social; the Special Environmental Concerns; and the extraordinary circumstances (40 CFR 1508.27). I find for the reasons stated below, that the preferred alternative:*

\_\_\_\_\_ Has been sufficiently analyzed in the EWP PEIS (reference all that apply)

Chapter \_\_\_\_\_

Chapter \_\_\_\_\_

Chapter \_\_\_\_\_

Chapter \_\_\_\_\_

Chapter \_\_\_\_\_

\_\_\_\_\_ May require the preparation of an environmental assessment or environmental impact statement.  
The action will be referred to the NRCS State Office on this date:

Title: \_\_\_\_\_ Date: \_\_\_\_\_  
NRCS representative of the DSR team

**Section 5B**

**Comments:**

**Section 5C**

**Sponsor Concurrence:** \_\_\_\_\_  
Sponsor Representative

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Section 6 Attachments:**

- A. Location Map
- B. Site Plan or Sketches
- C. Other (explain)

DSR No. \_\_\_\_\_

11 of 14  
Approved 7/2005

**INSTRUCTIONS FOR COMPLETING THE NRCS-PDM-20, DSR**

Section	Explanation of Requested Item	Who Completes
1	Enter Site Sponsor, Location, Evaluation, Selected Alternative, and Reviewed and Approval Signatures.	NRCS completes with voluntary assistance from Sponsor except for NRCS only portion of Section 1A.
1A	Enter the Date, DSR Number, Project Number. For NRCS only enter Eligible Yes/No, Approved Yes/No, Funding Priority Number, and Limited Resource Area Yes/No.	
1B	Enter Sponsor Name, Address, Telephone, Fax	
1C	Enter site location County, State, Congressional District, Latitude, Longitude, Section, Township, Range, UTM Coordinates, Drainage Name, Reach within drainage, and Damage Description.	
1D	Enter Yes/No and any Remarks for the Site Evaluation information. Any No response means the site is not eligible for EWP assistance and no further information is necessary to complete the DSR. (See NEWPPM 390-502.03 and 390-502-04)  Enter Yes/No regarding whether the affected public has been informed of the EWP program.	
1E	Enter the proposed treatment and the cost of installation.	NRCS only.
1F	NRCS Review and Approval.	
2	Use available natural resource, economic, and social, information, including the EWP Programmatic Environmental Impact Statement (PEIS), to briefly describe the effects of the alternatives to the proposed action including the “no action” alternative. The no action alternative is the predicted future condition if no action is taken. Typically, the proposed action and no action are the alternatives considered for EWP recovery measures due to the focus on repairing or preventing damages within a watershed. However, in cases where additional alternatives are considered, include all pertinent information to adequately address the additional alternatives (e.g., proposed action would be bio-engineering for bank stabilization, no action alternative, and an additional alternative may be riprap for bank stabilization).  Do not leave blanks where a consideration is not applicable, use NA to indicate the factor was considered but not applicable for the alternative.	NRCS completes with voluntary assistance from Sponsor.

Section	Explanation of Requested Item	Who Completes
2A	List all resource concerns which are relevant to the area of the proposed action and alternatives. Refer to the National Bulletin 450-5-8 TCH-COMPLETING AND FILING MEASUREMENT UNITS FOR RESOURCE CONCERNS IN THE FIELD OFFICE TECHNICAL GUIDE (FOTG). Note: the affected area may extend beyond the construction foot print (e. g. where water quality or water rights are affected downstream of the site.)	NRCS completes with voluntary assistance from Sponsor.
2B	Provide a brief description of the present condition of each resource concern listed in 2A. Quantify conditions where possible. Reference accompanying photographic documentation.	
2C	Briefly summarize the practice/system of practices being proposed, as well as the “no action” alternative is predicted future condition if no action is taken.	
2D	Document the efforts of the proposed action and alternatives for the considerations listed in 2A. Reference applicable quality criteria, information in the CPPE, and quantify effects whenever possible. Consider both long-term and short-term effects. Consider any effects which may be individually minor but cumulatively significant at a larger scale or over an extended time period. Clearly define the differences between proposed action, no action, and the other alternatives.	
2E	Enter Special Environmental Concerns for Clean Water Act Waters of the U.S., Coastal Zone Management Areas, Coral Reefs, Cultural Resources, Endangered and Threatened Species, Environmental Justice, Essential Fish Habitat, Fish and Wildlife Coordination, Floodplain Management, Invasive Species, Migratory Birds, Natural Areas, Prime and Unique Farmlands, Riparian Areas, Scenic Beauty, Wetlands, and Wild and Scenic Rivers for each alternative considered. In the case where the selected alternative from Section 5A impacts a Special Environmental Concern, additional information, coordination, permitting or mitigation may be required and adequate documentation should be prepared and attached to the DSR to identify how NRCS or the Sponsor addressed the concern.	

Continued Page 12 of 14  
Approved 7/2005

Section	Explanation of Requested Item	Who Completes
2F	<p>Identify Property Protected both private and public, business losses and other economic impacts considered for each alternative. Enter the dollar value of the potential future damages if no action is taken in the Future Damage (5) column. This would be the estimate of the value lost if the EWP recovery measure is not installed. Use the repair cost or damage dollar method to determine the estimate of future damages. The repair cost method uses the costs to return the impaired property, good, or services based on their original pre-event condition or value. The damage dollar method uses an estimate of the future damage to value (e.g. if the structure is condemned, then enter the value of the structure). Enter the estimated amount based upon existing information or information furnished by the sponsor, contractors or others with specific knowledge for recovery from natural disasters for each alternative considered. Often market values for properties or services can be obtained from personnel at the local county/parish tax assessment office.</p> <p>The DSR team needs to determine the Damage Factor (%) which is a coefficient that indicates the degree of damage reduction to a property that is attributed to the effect of the proposed EWP recovery measures. Use an appropriate estimate of how much of the damage the EWP recovery measure will avoid for the alternative being considered. If the recovery measures from a single site will prevent 100 percent of the damage use 100 percent.</p> <p>The Near Term Damage Reduction is the Future Damage (\$) times the Damage Factor (%). Sum the Near Term Damage Reduction values to calculate the Total Near Term Damage Reduction.</p> <p>Enter the Net Benefit which is computed by subtracting the Cost from section 3 from the total near term damage reduction.</p> <p>The economic section must be completed for each alternative considered. Attach additional sheets as necessary.</p>	NRCS completes with voluntary assistance from Sponsor.



# National Emergency Watershed Protection Program Manual

Section	Explanation of Requested Item	Who Completes
2G	<p>Enter information to describe the potential social impacts and considerations for each alternative. Answer Yes or No and any remarks necessary to adequately address each question.</p> <p>The information may be obtained through interviews with community leaders, government officials or sponsors.</p> <p>Factors such as road closures, loss of water, electricity, access to emergency services are used when answering whether the community as a whole has been impaired.</p> <p>This information is part of the environmental evaluation portion of the DSR but may be pertinent in Section 4 regarding priorities.</p> <p>The Social Considerations Section must be completed for each alternative considered. Attach additional sheets as necessary.</p>	NRCS completes with voluntary assistance from Sponsor.
2H	<p>Enter the Group Representation for the preferred alternative.</p> <p>Use the most recent census tract information based upon where the EWP recovery measures are located.</p>	Sponsor completes.
2I	<p>Enter whether easement, permissions, or permits, and mitigation will require consultation or coordination for the selected alternative (e.g., Clean Water Act section 404 permit, Endangered Species Act section 10 permits, and any State or county permits or requirements).</p> <p>Describe mitigation to be applied that will offset any adverse impacts and attach any documentation from other agencies regarding mitigation requirements.</p>	NRCS completes with voluntary assistance from Sponsor.
3	<p>Enter Proposed Recovery Measure(s) including Quantity, Units, Unit Cost, and Total Amount Cost.</p> <p>Enter sum of all Proposed Recovery Measure Costs to calculate Total Costs. Enter Total Installation Costs in Section 1F.</p> <p>The Engineering Cost Estimate must be completed for each alternative considered. Attach additional sheets as necessary.</p>	

Continued Page 13 of 14  
Approved 7/2005

Section	Explanation of Requested Item	Who Completes
4	This section is used to determine the Funding Priority for the preferred alternative and sequence for initiating recovery measures. Enter Yes/No for questions 1 through 4 and enter the number (exigency 1, serious threat to human life 2, etc.) in the right column, Ranking Number Plus Modifier. Complete the Modifier portion by placing the alphabetic indicator a. through f. in the Modifier column. Complete the Ranking Number Plus Modifier column by entering the alphabetic indicator(s) that exists within the site. The number of the site designates the priority (e.g., a site with a designation of 2 is a higher priority than a site with a designation of 3). The modifiers increase the priority for the same numeric site (e.g., a site with a designation of 1a, would be a higher priority than a site with a designation of 1, a site with a designation of 2bc would be a higher priority than a site designated as 2b). Enter the Funding Priority in Section 1A.	NRCS completes with voluntary assistance from Sponsor.
5	Enter the Findings, Rationale Supporting Findings, NRCS Representative signature and Comments, and Concurrence signature by the Sponsor(s).	NRCS completes.
5A	Indicate the preferred alternative and check the applicable finding being made. The NRCS Representative signs indicating the Finding selected. If the proposed action was adequately addressed in the PEIS, check all appropriate chapter paragraphs.	
5B	Enter any additional Comments.	
5C	Sponsor(s) signature indicating review and concurrence.	Sponsor(s) signature.
6	Include attachments for location map, site sketch or plan and other information as needed.	NRCS completes with voluntary assistance from Sponsor.

**Attachment 1**

**DSR- Summary of Effects Identified in the EWP Programmatic EIS**

**(5.2.2.1.2) Restore Hydraulic Capacity (Debris removal)**

- 1) Create access
  - a. ↓ vegetation ☐
  - b. ↑ soil compaction ☐
  - c. ↓ infiltration ☐
  - d. ↑ soil erosion ☐
  - e. ↓ streambank stability ☐
  - f. ↑ turbidity ☐
- 2) Dewater
  - a. ↓ aquatic life ☐
  - b. ↓ spawning habitat ☐
  - c. ↓ invertebrate attachment surfaces ☐
  - d. ↓ plunge pool/ habitats ☐
  - e. ↓ fish recruitment, mortality, species composition, T&E fish species if present ☐
  - f. ↓ wetland quality ☐
  - g. ↑ turbidity ☐
- 3) Use heavy equipment/ grading and shaping
  - a. ↓ vegetative cover ☐
  - b. ↑ flow velocity ☐
  - c. ↓ infiltration ☐
  - d. ↑ soil erosion ☐
  - e. ↑ turbidity ☐
  - f. alter channel morphology by ↑ compaction ☐
  - g. ↑ temperature ☐
  - h. ↓ dissolved oxygen ☐
  - i. ↓ aquatic biota such as vegetation, and immotile or slow moving species ☐
  - j. ↑ pollutants (petroleum, oil, lubricants (POLs) ☐
  - k. ↑ fertilizers, pesticides, and other chemicals ☐
- 4) Revegetation
  - a. ↓ soil erosion ☐
  - b. ↓ turbidity ☐
  - c. ↓ stream temperature ☐
- 5) Dispose of debris (5.2.2.1.3)
  - a. Haul off-site
    - i. ↑ compaction ☐
    - ii. ↑ erosion ☐
    - iii. ↓ effects on stream habitat ☐
    - iv. ↓ wetland filling ☐
  - b. Burn on-site
    - i. ↑ air pollution ☐
    - ii. ↑ pH ☐
    - iii. ↑ stream temperature ☐
    - iv. ↑ wetland filling ☐
    - v. ↓ habitat quality ☐
    - vi. ↓ fish and invertebrates ☐

## National Emergency Watershed Protection Program Manual

- c. Burn off-site
  - i. ↑ air pollution ☐
  - ii. ↑ site disturbance ☐
  - iii. ↓ chemical and biological effects ☐
  - iv. ↓ wetland filling ☐
  - v.
- d. Bury on-site
  - i. ↑ short term site disturbance ☐
  - ii. ↑ short term erosion ☐
  - i. ↑ wetland filling ☐
  - ii. ↓ habitat quality ☐
- e. Bury off-site
  - i. ↑ site disturbance ☐
  - ii. ↓ effects on habitat and benthic habitat ☐
  - iii. ↓ wetland filling ☐

### 5.2.2.2.2 Streambank Protection

- 1) Create access
  - a. ↓ vegetation ☐
  - b. ↑ soil compaction ☐
  - c. ↓ infiltration ☐
  - d. ↑ soil erosion ☐
  - e. ↓ streambank stability ☐
  - f. ↑ turbidity ST ☐
  - g. ↓ habitat quality ☐
- 2) Dewater
  - a. ↓ aquatic life ☐
    - i. ↓ spawning habitat ☐
    - ii. ↓ invertebrate attachment surfaces ☐
    - iii. ↓ plunge pool/ habitats ☐
    - iv. ↓ fish recruitment, mortality, species composition, T&E fish species if present ☐
  - b. ↓ wetland quality ☐
  - c. ↑ turbidity ☐
- 3) Use heavy equipment/ grading and shaping
  - a. ↓ vegetative cover ☐
  - b. ↑ soil compaction ☐
  - c. ↑ runoff ☐
  - d. ↑ flow velocity ☐
  - e. ↓ infiltration ☐
  - f. ↑ soil erosion ☐
  - g. ↑ bank erosion ☐
  - h. ↑ turbidity ST ☐
  - i. ↑ input of nutrients ☐
  - j. alter channel morphology by ↑ compaction ☐
  - k. ↓ formation of wetlands (onsite and downstream) ☐
  - l. ↓ resident biota ☐
  - m. ↑ temperature ST ☐
  - n. ↓ dissolved oxygen ST ☐ / ↑ dissolved oxygen LT ☐
  - o. ↓ aquatic biota such as vegetation, and immotile or slow moving species ☐
  - p. ↑ pollutants (petroleum, oil, lubricants (POLs) ☐
  - q. ↑ fertilizers, pesticides, and other chemicals ☐

## National Emergency Watershed Protection Program Manual

- 4) Borrow of materials
  - a. ↓ effectiveness of floodplains ☐
  - b. ↑ weakened streambanks ☐
- 5) Installation of structural practices
  - a. ↓ vegetative cover ☐
  - b. ↑ flow velocity ☐
  - c. ↓ infiltration ☐
  - d. ↑ soil erosion ST ☐/ ↓ soil erosion LT ☐
  - e. ↑ turbidity ST ☐/ ↓ turbidity LT ☐
  - f. alter channel morphology by ↑ compaction ☐
  - g. ↑ temperature ☐
  - h. ↓ dissolved oxygen ☐
  - i. ↓ aquatic biota such as vegetation, and immotile or slow moving species ☐
  - j. ↑ pollutants (petroleum, oil, lubricants (POLs) ☐
  - k. ↑ fertilizers, pesticides, and other chemicals ☐
  - l. ↓ riparian and aquatic vegetation ☐
  - m. ↑ natural flow regimes\* ☐
  - n. ↑ dissolved oxygen\* ☐
  - o. ↑ turbulence\* ☐
  - p. ↑ habitat quality\* ☐
  - q. ↓ turbidity\* ☐
  - r. ↓ time of installation\* ☐
  - s. ↓ erosion\* ☐
  - t. ↓ pollutants\* ☐
- 6) Revegetation
  - a. ↓ soil erosion ☐
  - b. ↓ turbidity ☐
  - c. ↓ sedimentation\* ☐
  - d. ↓ stream temperature ☐

\* 5.2.3.1.2 Effects of streambank repair using Rosgen methods

### 5.2.2.3.2 Dam, dike, and levee repair or removal

- 1) Create access
  - a. ↓ vegetation ☐
  - b. ↑ soil compaction ☐
  - c. ↓ infiltration ☐
  - d. ↑ soil erosion ☐
  - e. ↓ streambank stability ☐
  - f. ↑ turbidity ☐
- 2) Dewater
  - a. ↓ aquatic life ☐
    - i. ↓ spawning habitat ☐
    - ii. ↓ invertebrate attachment surfaces ☐
    - iii. ↓ plunge pool/ habitats ☐
    - iv. ↓ fish recruitment, mortality, species composition, T&E fish species if present ☐
    - v. ↓ wetland quality ☐
    - vi. ↑ turbidity ☐
- 3) Install armor

## National Emergency Watershed Protection Program Manual

- a. ↓ vegetative cover ☐
- b. ↑ flow velocity ☐
- c. ↓ infiltration ☐
- d. ↑ soil erosion ST ☐ / ↓ soil erosion LT ☐
- e. ↑ turbidity ST ☐ / ↓ turbidity LT ☐
- f. alter channel morphology by ↑ compaction ☐
- g. ↑ temperature ☐
- h. ↓ dissolved oxygen ☐
- i. ↓ aquatic biota such as vegetation, and immotile or slow moving species ☐
- j. ↑ pollutants (petroleum, oil, lubricants (POLs) ☐
- k. ↑ fertilizers, pesticides, and other chemicals ☐
- l. ↓ riparian and aquatic vegetation ☐

### 4) Grade, shape, and re-vegetate affected streambanks by seeding or planting

- a. ↓ vegetative cover ☐
- b. ↑ flow velocity ☐
- c. ↓ infiltration ☐
- d. ↑ ponding of water ☐
- e. ↓ soil productivity ☐
- f. ↑ soil erosion ☐
- g. ↑ turbidity ☐
- h. alter channel morphology by ↑ compaction ☐
- i. ↑ temperature ☐
- j. ↓ dissolved oxygen ☐
- k. ↓ aquatic biota such as vegetation, and immotile or slow moving species ☐
- l. ↑ pollutants (petroleum, oil, lubricants (POLs) ☐
- m. ↑ fertilizers, pesticides, and other chemicals ☐

### 5) Fill/ excavation

- a. ↑ run-off ☐
- b. ↓ aquatic habitat and biota ☐
- c. ↑ sediment in riffles ☐
- d. ↑ turbidity ☐
- e. ↓ migration patterns of salmonids ☐

### 5.2.2.4.3 Protecting structures in floodplains

#### 1) Create access

- a. ↓ vegetation ☐
- b. ↑ soil compaction ☐
- c. ↓ infiltration ☐
- d. ↑ soil erosion ☐
- e. ↓ streambank stability ☐
- f. ↑ turbidity ☐

#### 2) Dewater

- a. ↓ aquatic life ☐
  - i. ↓ spawning habitat ☐
  - ii. ↓ invertebrate attachment surfaces ☐
  - iii. ↓ plunge pool/ habitats ☐
  - iv. ↓ fish recruitment, mortality, species composition, T&E fish species if present ☐
  - v. ↓ wetland quality ☐
  - vi. ↑ turbidity ☐

#### 3) Use heavy equipment/ grading and shaping

## National Emergency Watershed Protection Program Manual

- a. ↓ vegetative cover ☐
  - b. ↑ flow velocity ☐
  - c. ↓ infiltration ☐
  - d. ↑ soil erosion ☐
  - e. ↑ turbidity ☐
  - f. alter channel morphology by ↑ compaction ☐
  - g. ↑ temperature ☐
  - h. ↓ dissolved oxygen ☐
  - i. ↓ aquatic biota such as vegetation, and immotile or slow moving species ☐
  - j. ↑ pollutants (petroleum, oil, lubricants (POLs)) ☐
  - k. ↑ fertilizers, pesticides, and other chemicals ☐
  - l.
- 4) Revegetation
- a. ↓ soil erosion ☐
  - b. ↓ turbidity ☐
  - c. ↓ stream temperature ☐
- 5) Dispose of debris (5.2.2.1.3)
- a. Haul off-site
    - i. ↑ compaction ☐
    - ii. ↑ erosion ☐
    - iii. ↓ effects on stream habitat ☐
    - iv. ↓ wetland filling ☐
  - b. Burn on-site
    - i. ↑ air pollution ☐
    - ii. ↑ pH ☐
    - iii. ↑ stream temperature ☐
    - iv. ↑ wetland filling ☐
    - v. ↓ habitat quality ☐
    - vi. ↓ fish and invertebrates ☐
  - c. Burn off-site
    - i. ↑ air pollution ☐
    - ii. ↑ site disturbance ☐
    - iii. ↓ chemical and biological effects ☐
    - iv. ↓ wetland filling ☐
    - v.
  - d. Bury on-site
    - i. ↑ short term site disturbance ☐
    - ii. ↑ short term erosion ☐
    - iii. ↑ wetland filling ☐
    - iv. ↓ habitat quality ☐
  - e. Bury off-site
    - i. ↑ site disturbance ☐
    - ii. ↓ effects on habitat and benthic habitat ☐
    - iii. ↓ wetland filling ☐
- 6) Borrow of materials
- a. ↓ effectiveness of floodplains ☐
  - b. ↑ weakened streambanks ☐
- 7) Installation of structural practices
- a. ↓ vegetative cover ☐

## National Emergency Watershed Protection Program Manual

- b. ↑ flow velocity ☐
- c. ↓ infiltration ☐
- d. ↑ soil erosion ST ☐/ ↓ soil erosion LT ☐
- e. ↑ turbidity ST ☐/ ↓ turbidity LT ☐
- f. alter channel morphology by ↑ compaction ☐
- g. ↑ temperature ☐
- h. ↓ dissolved oxygen ☐
- i. ↓ aquatic biota such as vegetation, and immotile or slow moving species ☐
- j. ↑ pollutants (petroleum, oil, lubricants (POLs) ☐
- k. ↑ fertilizers, pesticides, and other chemicals ☐
- l. ↓ riparian and aquatic vegetation ☐

### 8) Revegetation

- a. ↓ soil erosion ☐
- b. ↓ turbidity ☐
- c. ↓ stream temperature ☐

### 5.2.2.5.2 Protecting watershed uplands (Critical area treatment)

#### 1) Preparing sites

- a. ↑ soil compaction ST ☐
- b. ↓ vegetation ☐

#### 2) Seeding, or planting

- a. ↓ erosion LT ☐
- b. ↑ habitat quality LT ☐
- c. ↑ water flow LT ☐
- d. ↓ Sedimentation ☐

#### 3) Applying fertilizers, additives, or ground cover, check dams, protection of roads, installing drains, upland diversions, outlet structures, soil compaction

- a. ↓ soil stability ST ☐
- b. ↓ erosion ☐
- c. ↓ sedimentation ☐
- d. ↑ water flow LT ☐

#### 4) Installing drains

- a. alter channel course or profile ☐

### 5.2.3.2.2 Restore agricultural use to floodplains

#### 1) Deep tilling

- a. no effect ☐

#### 2) Sediment removal

- a. ↑ Introduce erodible soils ☐
- b. ↑ sedimentation ☐
- c. ↑ turbidity ☐
- d. ↓ habitat ☐
- e. ↓ channel structure ☐

### 5.2.3.3.2 Upland debris removal (Tornado debris removal)

#### 1) Create access

- a. ↓ vegetation ☐
- b. ↑ soil compaction ☐



## National Emergency Watershed Protection Program Manual

- c. ↓ infiltration ☐
- d. ↑ soil erosion ☐
- e. ↓ streambank stability ☐
- f. ↑ turbidity ☐
- g.

### 2) Use heavy equipment

- a. ↓ erosion LT ☐
- b. ↑ habitat quality LT ☐
- c. ↑ water flow LT ☐
- d. ↓ soil stability ST ☐
- e. ↓ erosion ☐
- f. ↓ sedimentation ☐
- g. ↑ water flow LT ☐

#### Legend:

↑ - indicates increase in the identified element  
↓ - indicates decrease in the identified element

ST = short-term effect

LT = long-term effect

Additional effects information can be found in Appendix B flow charts, EWP Final PEIS, (December 2004)



# National Emergency Watershed Protection Program Manual

## E. EWP Final Report

**U.S. DEPARTMENT OF AGRICULTURE**  
**Natural Resources Conservation Service**

**NRCS-PDM-23**  
**12/2005**

## EWP FINAL REPORT

<b>1.</b>	<b>Name of the Disaster:</b>	<b>2.</b>	<b>Assigned Project Code No:</b>
<b>3.</b>	<b>State:</b>	<b>4.</b>	<b>Date of Event:</b>
<b>5.</b>	<b>Completion Date:</b>	<b>6.</b>	<b>Report Date:</b>
<b>7.</b>	<b>County(ies):</b> _____ <b>City(ies)</b> _____	<b>8.</b>	<b>Sponsor(s):</b> County _____ SCD _____ Cities _____ Tribes _____ State _____
<b>9.</b>	<b>Total Construction Cost: \$</b>	<b>10.</b>	<b>Amt. FA Expended: \$</b>
<b>11.</b>	<b>Amt. TA Expended: \$</b>	<b>12.</b>	<b>Value of Local Contribution: \$</b>
<b>13.</b>	<b>Number of Federal Contracts</b>	<b>14.</b>	<b>Number of Non-federal Contracts</b>
<b>15.</b>	<b>Type of Disaster:</b> Flood: ____ Fire: ____ Hurricane: ____ Tornado: ____ Typhoon: ____ Earthquake: ____ Ice Storm: ____ Other (Type): _____		
<b>16.</b>	<b>Description of the Disaster:</b>		
<b>17.</b>	<b>Number of DSR's Completed:</b>	<b>18.</b>	<b>Number of Sites Treated:</b>
<b>19. RESULTS: OUTCOMES:</b>		<b>20. RESULTS: OUTPUTS:</b>	
<b>a. Number of Public Buildings Protected</b>		<b>a. Feet of Debris Removed</b>	
<b>b. Number of Private Buildings Protected</b>		<b>b. Acres of Land Protected</b>	

National Emergency Watershed Protection Program Manual

<b>c. Number of miles of road protected</b>		<b>c. Feet of Streambank Stabilized</b>	
<b>d. Number of Utilities Protected</b>		<b>d. Other</b>	
<b>e. Value of Property Protected</b>		<b>e. Total Benefits</b>	
		<b>f. Economic Benefits</b>	
<b>f. Other</b>		<b>g. Environmental Benefits</b>	
		<b>h. Social Benefits</b>	

  

<b>21.</b>	<p><b>Number Benefited</b></p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width:80%;">Group Representation</th> <th style="width:20%;">Number</th> </tr> </thead> <tbody> <tr><td>American Indian/Alaska Native Female Hispanic</td><td></td></tr> <tr><td>American Indian/Alaska Native Female Non-Hispanic</td><td></td></tr> <tr><td>American Indian/Alaska Native Male Hispanic</td><td></td></tr> <tr><td>American Indian/Alaska Native Male Non-Hispanic</td><td></td></tr> <tr><td>Asian Female Hispanic</td><td></td></tr> <tr><td>Asian Female Non-Hispanic</td><td></td></tr> <tr><td>Asian Male Hispanic</td><td></td></tr> <tr><td>Asian Male Non-Hispanic</td><td></td></tr> <tr><td>Black or African American Female Hispanic</td><td></td></tr> <tr><td>Black or African American Female Non-Hispanic</td><td></td></tr> <tr><td>Black or African American Male Hispanic</td><td></td></tr> <tr><td>Black or African American Male Non-Hispanic</td><td></td></tr> <tr><td>Hawaiian Native/Pacific Islander Female Hispanic</td><td></td></tr> <tr><td>Hawaiian Native/Pacific Islander Female Non-Hispanic</td><td></td></tr> <tr><td>Hawaiian Native/Pacific Islander Male Hispanic</td><td></td></tr> <tr><td>Hawaiian Native/Pacific Islander Male Non-Hispanic</td><td></td></tr> <tr><td>White Female Hispanic</td><td></td></tr> <tr><td>White Female Non-Hispanic</td><td></td></tr> <tr><td>White Male Hispanic</td><td></td></tr> <tr><td>White Male Non-Hispanic</td><td></td></tr> <tr><td>Total Group</td><td></td></tr> </tbody> </table> <p style="margin-top: 10px;">Census tract(s) _____</p>	Group Representation	Number	American Indian/Alaska Native Female Hispanic		American Indian/Alaska Native Female Non-Hispanic		American Indian/Alaska Native Male Hispanic		American Indian/Alaska Native Male Non-Hispanic		Asian Female Hispanic		Asian Female Non-Hispanic		Asian Male Hispanic		Asian Male Non-Hispanic		Black or African American Female Hispanic		Black or African American Female Non-Hispanic		Black or African American Male Hispanic		Black or African American Male Non-Hispanic		Hawaiian Native/Pacific Islander Female Hispanic		Hawaiian Native/Pacific Islander Female Non-Hispanic		Hawaiian Native/Pacific Islander Male Hispanic		Hawaiian Native/Pacific Islander Male Non-Hispanic		White Female Hispanic		White Female Non-Hispanic		White Male Hispanic		White Male Non-Hispanic		Total Group	
Group Representation	Number																																												
American Indian/Alaska Native Female Hispanic																																													
American Indian/Alaska Native Female Non-Hispanic																																													
American Indian/Alaska Native Male Hispanic																																													
American Indian/Alaska Native Male Non-Hispanic																																													
Asian Female Hispanic																																													
Asian Female Non-Hispanic																																													
Asian Male Hispanic																																													
Asian Male Non-Hispanic																																													
Black or African American Female Hispanic																																													
Black or African American Female Non-Hispanic																																													
Black or African American Male Hispanic																																													
Black or African American Male Non-Hispanic																																													
Hawaiian Native/Pacific Islander Female Hispanic																																													
Hawaiian Native/Pacific Islander Female Non-Hispanic																																													
Hawaiian Native/Pacific Islander Male Hispanic																																													
Hawaiian Native/Pacific Islander Male Non-Hispanic																																													
White Female Hispanic																																													
White Female Non-Hispanic																																													
White Male Hispanic																																													
White Male Non-Hispanic																																													
Total Group																																													

22.	<b>Description of environmental and cultural resources affected, degree of impacts to each, and the benefits accrued by the project to the environmental and cultural resources:</b>
23.	<b>Description of combined Beneficial (Evt. Econ. and Soc.) Effects Accrued:</b>
24.	<b>Description of any unusual situations or problems.</b>
25.	<b>Were 8(a) set aside, woman owned, or small business contractors used for NRCS activities?</b> <b>Number of Contracts: _____ Dollar amount of such contracts or procurements: _____</b>
26.	<b>For structural repairs, was a waiver granted to repair any sites more than twice within a 10 year period? Yes___No___ If yes, how many total times was the site repaired within 10 years?_____</b>
27.	<b>Did engineering or construction deficiencies in previously installed EWP work cause or lead to the impairment? Yes___No___ If yes, how many sites?_____</b>
28.	<b>All projects completed within required timeframes, including any extensions approved? Yes___No___</b>
29.	<b>Briefly describe what lessons you learned and what you would do differently next time.</b>

## National Emergency Watershed Protection Program Manual

I certify that all Emergency Work for this disaster under the EWP program is complete and was carried out within NRCS Policies and procedures. I am hereby returning \$ \_\_\_\_\_ of unused Financial Assistance funding and \$ \_\_\_\_\_ of unused Technical Assistance funding from this project.

Signed: \_\_\_\_\_ State Conservationist      Date: \_\_\_\_\_

Reproduce Locally

### USDA NONDISCRIMINATION STATEMENT

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write USDA, Director of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202)720-6382 (TDD). USDA is an equal opportunity provider and employer

**505.21 Reserved**

## PART 505 — EXHIBITS

### SUBPART D - STATUTES AND REGULATIONS

#### 505.30 Statutory Authority

Public Law 81–516, Section 216, 33 U.S.C. 701b as amended

“The Secretary of Agriculture is authorized to undertake emergency measures, including the purchase of floodplain easements, for runoff retardation and soil-erosion prevention, in cooperation with landowners and land users, as the Secretary deems necessary to safeguard lives and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or any other natural occurrence is causing or has caused a sudden impairment of the watershed.”

#### 505.31 Applicable Regulations

7 CFR 624, Emergency Watershed Protection Program Regulation, Final Rule, Published April 4, 2005.

#### DEPARTMENT OF AGRICULTURE

#### Natural Resources Conservation Service

#### 7 CFR Part 624

#### Emergency Watershed Protection Program

**AGENCY:** Natural Resources Conservation Service, USDA. **ACTION:** Final rule.

**SUMMARY:** The United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) is issuing a final rule for the Emergency Watershed Protection (EWP) Program to improve the effectiveness of its response to natural disasters. This final rule establishes the process by which NRCS will administer the EWP Program, responds to comments on the proposed rule received from the public during the 60-day comment period, and incorporates modifications and clarifications to improve implementation of the program. **DATES:** *Effective Date:* May 4, 2005.

**ADDRESSES:** This final rule may be accessed via the Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at <http://www.nrcs.usda.gov/programs/ewp/>. Select the EWP rule link listed on the EWP program page.

**FOR FURTHER INFORMATION CONTACT:**

Victor Cole, (202) 690–0793, fax (202) 720–4265, [victor.cole@usda.gov](mailto:victor.cole@usda.gov), Financial Assistance Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890 or for information regarding EWP floodplain easements, contact Leslie Deavers (202) 720–1062, fax (202) 720–6697, [leslie.deavers@usda.gov](mailto:leslie.deavers@usda.gov), Easement Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890. For information regarding administration of the EWP program by the United States Department of Agriculture Forest Service, contact Meredith Webster, (202) 205–0804, fax (202) 205–1096, [mmwebster@fs.fed.us](mailto:mmwebster@fs.fed.us), USDA Forest Service, 201 14th Street SW., 3 South Yates Building, Mail Stop 1121, Washington, DC 20024

**SUPPLEMENTARY INFORMATION:**

#### Background

The Secretary of Agriculture cooperates with other Federal, State, and local agencies in the recovery from natural disasters such as hurricanes, tornadoes, fires, drought, and floods through implementation of the EWP Program (authorized by Section 216 of the Flood Control Act of 1950, Public Law 81–516, 33 U.S.C. 701b–1; and Section 403 of the Agricultural Credit Act of 1978, Public Law 95–334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, 16

U.S.C. 2203). EWP, through local sponsors, provides emergency measures for run-off retardation and erosion control to areas where a sudden impairment of a watershed threatens life or property. The Secretary of Agriculture has delegated the administration of EWP to the Chief of NRCS on state, tribal, and private lands, and Chief of USDA Forest Service (FS) on National Forest System lands, including any other lands that are administered under a formal agreement with the FS. The FS administers the EWP Program in accordance with Forest Service Manuals 1950 and 3540, and the Forest Service Handbook



## National Emergency Watershed Protection Program Manual

1909.15. This rule only provides direction to the NRCS on administering the EWP Program.

### **Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this final rule is a “significant action” for the purposes of Executive Order 12866. Pursuant to Section 6(a)(3) of Executive Order 12866, NRCS has conducted an economic analysis of the potential impacts associated with this final rule as compared to the existing program. The economic analysis concluded that changes to the program implemented by this rule may save up to \$1.4 million each year. These changes include: Setting EWP priorities, pre-disaster readiness, limiting repairs to 2 times in 10 years, and discontinuing the practice of providing EWP funds on Federal lands. However, some of this expected reduction may be offset by increased cost-share for limited resource counties and the use of EWP in the repair of conservation practices on agricultural lands. A copy of this cost-benefit analysis is available upon request from the address listed above.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor NRCS are required by 5 U.S.C 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

### **Environmental Evaluation**

A Programmatic Environmental Impact Statement (PEIS) and Record of Decision (ROD) were prepared as a part of this rulemaking. NRCS considered both the comments received on the draft PEIS and the proposed rule in formulation of the final regulation. Copies of the final PEIS and ROD may be obtained from the Financial Assistance Programs Division, Natural Resources Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013–2890. The final PEIS and ROD may be accessed via the Internet. Users can access the NRCS homepage at <http://www.nrcs.usda.gov/programs/ewp/>. Select the PEIS link listed on the EWP program page.

### **Paperwork Reduction Act**

This final rule will not alter the collection of information previously approved by the Office of Management and Budget and assigned number 0578–0030.

### **Government Paperwork Elimination Act**

NRCS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS is proposing to develop an online application and information system for public use.

### **Executive Order 13132**

This final rule has been reviewed in accordance with requirements of Executive Order 13132, Federalism. NRCS has determined that the rule conforms to the Federalism principles set forth in the Executive Order; would not impose any compliance cost on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government.

### **Executive Order 12998**

This final rule has been reviewed in accordance with Executive Order 12998. The provisions of this rule are not retroactive. Furthermore, the provisions of this final rule pre-empt State and local laws to the extent that such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614 and 11 must be exhausted. For EWP recovery measures, an individual landowner is not an EWP participant nor is the legal substantive status of land affected by an NRCS decision regarding the eligibility of a measure for EWP assistance. Therefore, an individual landowner is not entitled to appeal an EWP recovery measure determination under 7 CFR parts 614 and 11.

# National Emergency Watershed Protection Program Manual

## Executive Order 13175

NRCS has taken measures to ensure tribal officials are aware of the EWP Program and are provided opportunities to receive assistance in compliance with the Executive Order. NRCS established field offices within some reservations and tribal liaison staff to promote outreach and coordination with tribal officials. The result of this effort has been increased participation in the EWP Program by tribes. Additionally, NRCS has included a waiver provision in this regulation which complies with the flexibility requirement of the Executive Order.

## Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This regulation is not a major rule under 5 U.S.C. 801 *et. seq.* the Small Business Regulatory Enforcement Fairness Act:

- (a) This regulation would not produce an annual economic effect of \$100 million. The changes to the program are expected to yield cost savings of up to \$1.4 million per year.
- (b) This regulation would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) This regulation would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

## Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, NRCS assessed the effects of this final rule on State, local, and tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or tribal government, or the private sector; therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

## Overview

The EWP Program helps remove threats to life and property that remain in the nation's watersheds in the aftermath of natural disasters including, but is not limited to, floods, fires, windstorms, ice storms, hurricanes, typhoons, tornadoes, earthquakes, volcanic actions, slides, and drought. The EWP Program is administered by NRCS, on state, tribal, and private lands by providing technical and financial assistance to local sponsoring authorities to preserve life and property threatened by disaster for runoff retardation and soil-erosion prevention. Funding is typically provided through Congressional emergency supplemental appropriations. Threats that the EWP Program addresses are termed watershed impairments. These include, but are not limited to, debris-clogged stream channels, undermined and unstable streambanks, jeopardized water control structures and public infrastructure, wind-borne debris removal, and damaged upland sites stripped of protective vegetation by fire or drought. If these watershed impairments are not addressed, they would pose a serious threat of injury, loss of life, or devastating property damage should a subsequent event occur.

On November 19, 2003 (**Federal Register** Vol. 68, No. 223 pages 65202–65210) NRCS initiated rulemaking by publishing a proposed rule with request for comments to modify the existing regulation at 7 CFR part 624 to make programmatic changes that allow the repair of enduring conservation practices, limit repeated site repairs, allow additional easement purchases, address environmental justice issues, and limit treatments on federal lands. In this rulemaking, NRCS has incorporated changes in program administration and in project execution dealing with traditional watershed impairments. This final rule expands the program by providing for removal of sediment in the floodplain and repair of damaged structural conservation practices to the list of watershed impairments for which EWP Program funds may be used. Additionally, the regulatory changes include: Allowing for up to 90 percent cost-share for limited resource areas; limit repair to twice in a ten year period; eliminate the single beneficiary requirement; purchase of easements on non-agricultural lands; establish one easement category; and funding projects on Federal lands only when such funding is not an inappropriate funding augmentation of the land management agency appropriations.

Program delivery improvements contained in this final rule are designed to enable NRCS field and state office personnel to provide EWP assistance more effectively and efficiently. NRCS believes that these improvements will more fully, equitably, and consistently meet the needs of people requiring emergency assistance. Program improvements are designed to address environmental, economic, and social concerns and values.

The changes adopted in this final rule were identified, discussed, and refined in an ongoing comprehensive program review that NRCS initiated and then issued in the proposed rule. The process included extensive opportunities for public participation and identified substantive ways to improve the environmental, economic, social, and technical soundness of program activities.

In response to the proposed rulemaking, seven separate responses from the public containing about 25 specific comments were received during the 60-day comment period: 1 response from an individual, 2 from conservation districts and related groups, and 4 from State agencies.

Additional responses were received from a Federal agency and NRCS employees; their comments are not included in the following analysis of public comments. These responses were treated as inter and intra-agency comments and considered in the drafting of the final rule along with the public comments where appropriate.

## National Emergency Watershed Protection Program Manual

All comments received are available for review in Room 6019, South Agriculture Building, 14th and Independence Ave., SW., Washington, DC, during regular business hours (8 a.m. to 5 p.m.) Monday through Friday.

### Analysis of Public Comment

Overall, the comments received were favorable and supported the proposed changes to the EWP Program. Some commentors offered suggestions for improving or clarifying specific sections of the proposed rule which resulted in the agency making changes to the proposed rule as identified in the section-by-section discussion of comments.

The comments focused on a wide variety of issues in the proposed rule. Editorial and other language clarification changes were suggested; these comments are not included in the following analysis but all were considered and many of the minor technical changes were included in the final rule. For the sections not listed in this preamble, the agency has adopted the language described in the proposed rule with the exception of non-substantive editorial and other language clarifications.

Several comments were related to funding and suggested that the EWP Program should be funded as a line item in NRCS' fiscal year appropriations since there is sometimes a significant delay from the date of the natural disaster until funding is provided. Funding for the EWP Program is typically provided through emergency supplemental appropriations and it would require Congressional action to include EWP funding as a line item.

### Section-By-Section Discussion of Comments Received on the Proposed Rule Provisions

*Section 624.4 (b) Exigency.* Several comments were received supporting the clarification of the term "exigency" and elimination of the term "non-exigency".

NRCS acknowledges this support and consequently is adopting the proposed language without changes. The changes were proposed because the agency had previously encountered various cases where the term "exigency" was applied too liberally and implemented for purposes for which it was not intended. Interpretations of the terms "exigency" and "non-exigency" varied widely within NRCS. NRCS's intent when establishing these two categories (exigency and non-exigency) in the previous rulemaking (46 FR 65677, Nov. 17, 1981) was to allow NRCS to respond quickly to only those situations that needed immediate attention.

In addition, the previous regulation tied cost-sharing to this designation, although NRCS has not applied the higher cost-sharing rate, originally set for exigencies, for the past 11 years. Instead, NRCS has applied a single cost-share rate of 75 percent to exigent situations. However, NRCS recognizes there may be unique situations that require a waiver from this cost-sharing rate. The agency added *Section 624.11 Waivers* which allows the NRCS Deputy Chief for Programs to waive any provision of these regulations to the extent allowed by law. An example may include allowing up to 100 percent cost-sharing for a limited resource area.

Based upon past experience, NRCS reconsidered the 5-day exigency time frame and has lengthened the time frame to accomplish exigency measures from 5 days to 10 days. This additional time will aid sponsors in their effort to secure their cost-share. Additionally, many EWP exigency situations involve permitting or other legal requirements resulting in additional time. The additional five days should provide time for the sponsors to secure necessary "emergency" permits and for NRCS and sponsors to comply with any applicable Federal law or regulation.

*Section 624.6(b)(2)(i).* Two comments were received that express support for limiting of repair of the same site to only twice within a ten year period in order to avoid repetitive Federal funding, which could in turn perpetuate activities that are not best suited for the areas prone to impacts from natural disasters. Two comments also expressed concern regarding whether the limitation was applicable to the removal of debris within the same site. Consequently, NRCS has modified the language to reflect that the limitation refers to structural measures only. NRCS recognizes that in most areas of the country there is no practical means to effectively prevent debris from entering and accumulating in the watershed as a result of repetitive natural disasters. Therefore, NRCS does not intend to limit the number of times debris can be removed within the same location due to a natural or constructed (*e.g.*, road crossing) restriction within a waterway. Rather, NRCS would limit repairs under EWP to twice within a 10-year period for the same cause (*i.e.*, flooding) at the same site for structural measures. If structural measures have been installed/ repaired or protected twice with EWP assistance and less than 10 years has elapsed between the disaster that triggered the first repair and the disaster triggering a third repair, the only option available under EWP would be to place a floodplain easement on the damaged site.

For example, if a home was protected from destruction twice using EWP assistance for two separate events, regardless of the structural measure used to protect the home or the location along the waterway of the protection efforts, EWP funds would not be available for a third protection effort of the home within the 10-year period for the same cause. For repairs of dikes, levees, berms, and similar structures, because these structures can run contiguously for miles, a specific location on a structure is considered one EWP site to determine whether future impacts to this site on the structure are eligible for EWP funds. Thus, repairs can be made repetitively so long as the same location is not repetitively repaired more than twice within 10 years.

*Section 624.6(b)(2)(iv).* Two comments were received that supported the language change to clarify that NRCS can only provide EWP assistance on Federal lands in situations where safeguards are followed to avoid inappropriate augmentation of appropriations, therefore, NRCS is adopting the proposal without changes. One comment recommended that exigency situations should be funded on Federal lands.

NRCS and the FS have been delegated the authority to administer the EWP program. NRCS administers the program

## National Emergency Watershed Protection Program Manual

on state, tribal, and private lands while the FS administers the program on National Forest System lands, including lands under an official management agreement with the FS. NRCS is the lead USDA agency, responsible for developing EWP regulations and policy for both agencies and through a 1998 Memorandum of Understanding with the FS, NRCS also manages the funding for both agencies. However, recent Congressional appropriations have designated the funding for NRCS, which does not authorize NRCS to transfer funding to the FS for EWP measures on lands it manages. The existing language of 7 CFR 624.4 language was changed to reflect that NRCS will transfer funding to the FS only when it is appropriate *e.g.*, when the EWP funding is provided to the Secretary of Agriculture with discretion to provide the funding to both agencies. For Federal lands, it is the Federal land management department or agency that is responsible for securing funding to undertake emergency repair activities within lands under its control.

In response to the commentor that recommended that exigency situations should be funded on Federal lands, the FS is responsible for determining whether exigency situations exist on lands it manages in accordance with regulations and policy established by NRCS. Funding EWP activities on Federal lands other than those under FS management may be an inappropriate augmentation of another Federal agency's budget. If USDA is Congressionally authorized, funding EWP activities on Federal lands may be appropriate. NRCS has adopted, without changes, the proposal defined in section 624.6(b)(2)(iv) which limits the use of EWP funding on Federal lands except when authorized by Congress or adequate safeguards are followed.

*Section 624.6(b)(3).* Several comments were received that supported including eligibility for structural, enduring, and long-life conservation practices. Additionally, several comments expressed concern that the program should not overlap with Emergency Conservation Program (ECP) administered by the Farm Service Agency (FSA).

As stated in the preamble of the proposed rule, NRCS does not intend to overlap the EWP program with ECP. EWP assistance would only be applicable when the emergency measures are not eligible for assistance under ECP. EWP differs significantly from ECP because a sponsor is required for EWP recovery work; EWP recovery assistance does not provide financial assistance directly to individuals but rather to eligible sponsors.

NRCS can provide EWP assistance toward upgrading damaged or undersized practices for structural, enduring, and long-life conservation practices when technology advances or construction techniques warrant. Such modifications will be cost shared in accordance with Section 624.7. All structural, enduring, and long-life conservation practices for which the sponsor is required to obtain a permit issued by a Federal, State, or local entity shall be designed and installed to meet the permit requirements or NRCS standards, whichever is greater. If a structure has to be upgraded to meet federal permitting or other requirements, such modifications will be cost shared in accordance with Section 624.7 NRCS has adopted the proposal for structural, enduring, and long-life conservation practices and has modified the language in the final rule to clarify that EWP assistance is not available when ECP is applicable.

*Section 624.6(c).* Several comments were received that supported expansion of eligible work to include assistance for areas impacted that are beyond the immediate area of the waterway.

NRCS acknowledges this support and recognizes that agricultural productivity, public health and safety, and the environment are often threatened in the aftermath of disasters that occur outside the immediate limits of a waterway. Therefore, NRCS has expanded the EWP Program assistance described in the proposed rule and adopted here in the final rule to include all recovery measures within watersheds (*see* Section 624.6 (c) Eligible practices) on all state, tribal, and private lands otherwise meeting the EWP eligibility requirements. NRCS may provide EWP assistance for the removal of sediment and other debris from agricultural land (croplands, orchards, vineyards, and pastures) and windblown debris. This provision of the proposed regulation also provides for EWP assistance for drought recovery activities.

The expansion of eligible recovery measures is primarily associated with deposits of large quantities of sediments and other debris on floodplains usually occur from major flooding, and tornadoes and hurricanes. The sediments are usually coarse and infertile, and frequently destroy or smother plants and impair normal agricultural use. This is a normal occurrence in the dynamics of floodplain systems, but it can jeopardize the productivity of agricultural lands and adversely affect structures and property within urban areas. As set forth in the final rule, NRCS will now consider alternative practices to address the type of damage such as:

- . • Removing and disposing the sediment and other debris
- . • Incorporating the sediment into the underlying soil
- . • Offering to purchase a floodplain easement (*see* Section 624.10)

Whether these sites qualify for EWP assistance and what the most effective alternative treatment is for eligible sites depends upon many factors: size of the particles, depth of material deposited, lateral extent of the sediment and debris, soil type of the underlying material, and land use and value of the land. Floodplain easements (*see* Section 624.10) may be used if there is too much debris to incorporate or haul off-site, or otherwise disposed.

Most debris that is deposited on upland areas is carried from winds of hurricanes or tornadoes. Such debris may cover portions of several watersheds and normally consists of downed trees, utility poles, and fence posts; livestock and poultry carcasses; or building materials, such as insulation, shingles, metal roofing, metal siding, and similar non-biodegradable materials. Similarly, ice storms may result in debris deposition and cause the death of livestock and poultry. Debris removal will typically be associated with the removal of debris upstream of bridges and culverts, or in the upland portion of a watershed where debris would readily be moved through runoff and deposited during a subsequent storm event in a waterway which could cause blockages in the waterway, flooding homes and other

## National Emergency Watershed Protection Program Manual

structures.

The practice components adopted to address upland debris deposition may include, but are not limited to:

- Creating access when needed to move trucks and heavy equipment to a debris site
- Using chain saws, other power tools, winches, and other machinery and heavy equipment to gather and process the debris for onsite disposal or removal
- Disposing of debris in accordance with local rules and regulations on-site by burial, chipping, or burning
- Loading on trucks for removal and disposal off-site in approved sites or landfills, based upon the composition of the material
- Obtaining special technical assistance and personnel to handle hazardous materials such as asbestos, petroleum products, propane, or other compressed gas containers, or other potentially hazardous or toxic compounds or materials
- Grading, shaping, and revegetating, by seeding or planting, any portion of the area affected by the debris removal operation

*Section 624.6(c) Eligible practices.* Comments were received regarding drought emergencies suggesting the allowance of permanent drought measures such as drilling water wells, and also requested a timeframe for how long hay or water should be provided during a drought emergency.

Under the EWP Program drought recovery practices are generally temporary in nature and are intended to reduce the consequences of a drought. The EWP program provides for the repair or restoration to pre-disaster conditions. Drilling wells for livestock watering would be considered a “betterment” above that which existed prior to the drought and as such not eligible for EWP assistance. Additionally, the FSA may provide funding to drill wells for livestock watering under ECP during drought conditions. EWP assistance typically includes soil erosion prevention measures, prescribed grazing, or reseeding, which allows rangeland to recover more rapidly. As set forth in the proposed rule, NRCS believes that EWP assistance should not be used during drought situations to install permanent practices or structures, including water wells, irrigation systems, or purchase of portable equipment (*i.e.*, water pumps) and has maintained this limitation in the final rule. NRCS has removed the provision in section 624.6(c)(4) of the proposed rule that allowed for providing temporary water for livestock and purchasing and transporting hay. The proposal to provide temporary water would be duplicative of eligible measures under the ECP administered by FSA. The proposal to purchase and transport hay was also eliminated since this activity may not achieve the results necessary for runoff retardation and soil erosion prevention since livestock would still be allowed to graze within the drought-impacted watershed area. Additionally, EWP practices during drought situations should not be conducted at the expense of another natural resource, such as pumping or releasing water from a water body to an extent that is environmentally detrimental.

*Section 624.6(e) Implementation.* Two comments were received that recommended NRCS consider the “buy out” of structures, primarily houses, rather than repairing the waterway to protect the houses. NRCS believes there is sufficient flexibility in this regulation to purchase and remove houses or other structures in cases where the removal meets the eligibility requirements of EWP, it is the least costly alternative, and the buy out is voluntary, and does not involve a leasee or rentor. Consequently, the proposed language has been adopted without change in the final rule.

*Section 624.7 Cost share assistance.* One comment recommended authorizing 100 percent for exigency situations since sponsors may not be able to secure funding within time frame required to complete exigency EWP measures.

NRCS has adopted in the final rule *Section 624.11 Waivers* which allows the NRCS Deputy Chief for Programs to waive any provision of these regulations to the extent allowed by law when the agency makes a written determination that such waiver is in the best interest of the Federal government. An example may include allowing up to 100 percent cost-sharing for a sponsor when the sponsor demonstrates they have insufficient resources or finances to contribute the 25 percent cost-share in an exigency situation. All exigency situations do not warrant 100 percent Federal cost-share. However, through the waiver provision of the final rule, the agency recognizes that there may be situations where 100 percent cost-share is warranted.

*Section 624.7(b) (c).* Several comments supported the definition set forth in the proposed rule at Section 624.4(e) and cost-share rate for limited resource areas. One commenter requested clarification as to whether all of the criteria must be met.

The definition of a limited-resource area is a county where average housing values are less than 75 percent of the State average, per capita income is less than 75 percent of the national per capita income, and unemployment during the preceding 3 years is at least twice the U.S. average. To respond to the comments and, to clarify NRCS’ intent, the definition set forth in the proposed rule is being modified such that all three criteria have to be met to qualify for the 90 percent cost-share. NRCS would use the most recent U.S. census and unemployment data to make this determination. NRCS is not adopting the provision in the proposed rule which provided the NRCS State Conservationist with the authority to document the limited-resource status of an area within a non-limited resource county by applying National census data for the three factors mentioned above and approving the 90 percent cost-share rate for that area. After further review, NRCS recognizes that making this determination within a non-limited-resource county may be difficult since specific U.S. census and unemployment data may not be available. In situations where the NRCS State Conservationist believes the 90 percent cost-share is warranted, a waiver can be requested in accordance with Section 624.11 Waivers which allows the NRCS Deputy Chief for Programs to waive any provision of these regulations to the

## National Emergency Watershed Protection Program Manual

extent allowed by law when the agency makes a written determination that such waiver is in the best interest of the Federal government.

*Section 624.8 Assistance.* NRCS did not receive any comments on this provision and is adopting the change in the proposed rule which eliminated Section 624.8 Environment in the previous rulemaking (46 FR 65677, Nov. 17, 1981) since the information is duplicative of other USDA and NRCS regulations and policy (see 7 CFR part 1b; 7 CFR part 650; NRCS General Manual Title 190, Part 410; and NRCS National Environmental Compliance Handbook). In the proposed rule, NRCS did not identify the regulations and policies and has done so here to ensure that the public is aware of USDA and NRCS' environmental compliance regulations and policies that are applicable for the EWP Program.

*Section 624.8(c)(3) Funding Priorities.* One comment requested that floodplain easement acquisition should be included in the list of EWP priorities.

Funding for floodplain easement acquisition has been managed separately from EWP funding for recovery measures. This is due to Congressional language as part of the EWP funding appropriation which has designated the amount of funding that could be used to purchase floodplain easements. When NRCS receives funding for acquisition of floodplain easements, NRCS State Conservationist will establish ranking or priority watersheds to acquire floodplain easements. This proposed provision is adopted in the final rule with clarification that the funding priorities apply to EWP recovery measures.

*Section 624.9 Time limits.* One comment recommended extending the length of time by which recovery work must be completed beyond 220 days due to the length of time necessary in some cases for sponsors to obtain permits.

NRCS believes that in most cases emergency recovery measures should be completed within the 220-day time frame. However, *Section 624.11 Waivers* provides authority for the NRCS Deputy Chief for Programs to waive any provision of these regulations to the extent allowed by law which could include situations where permitting, endangered and threatened species compliance, cultural resources, or other legal requirements result in additional time to complete recovery work funded under the EWP Program. Accordingly, this proposed provision is adopted in the final rule without change.

*Section 624.10 Floodplain easement.* One comment requested that floodplain easements should focus on wetland and wildlife habitat restoration.

Under the floodplain easement option, a landowner offers to sell to NRCS a permanent easement that provides NRCS with the full rights to restore and enhance the floodplain's functions and values which include consideration of wetland and wildlife habitat restoration. The program is not a substitute for the Wetlands Reserve Program, also administered by NRCS, since many other floodplain restoration factors must be considered, and may be the focus, when restoring floodplain functions within a site. Floodplain easements restore, protect, maintain, and enhance the functions of wetlands and riparian areas; conserve natural values including fish and wildlife habitat, water quality, flood water retention, ground water recharge, and open space; and safeguard lives and property from floods, drought, and the products of erosion. The agency has adopted the proposed provision in the final rule without change.

*Section 624.10(b)(2)(ii).* Comments were received that supported the acquisition of non-agricultural lands when purchasing floodplain easements.

Under the proposed rule, NRCS expanded the potential acquisition of floodplain easements to include non-agricultural lands. Structures within the floodplain easement may be demolished or relocated outside the 100-year floodplain, whichever costs less. This element of the proposed rule would tend to increase program costs in the short-term, but reduce costs to the Federal government in the long-term, as people and structures in nonagricultural areas are relocated out of the floodplain. In addition, as more acreage is returned to open space, the floodplain would function in a more natural state with increased long-term public benefits. The agency has adopted the proposed provision in the final rule without change.

*Section 624.10(b)(4).* Section 624.10(b)(4) sets forth the compensation that NRCS will pay a landowner for the purchase of a floodplain easement. The floodplain easement program is the successor program to the Emergency Wetlands Reserve Program (EWRP) that NRCS administered with EWP funds to address the 1993 and 1995 Midwest Flood events. As a component of the Wetlands Reserve Program, landowners received agricultural value for an EWRP easement. In the proposed rule, NRCS indicated that it would pay a landowner for a floodplain easement the lesser of the three following values as an easement payment: (1) A geographic rate established by the NRCS State conservationist, if one has been established; (2) A value based on a market appraisal analysis for agricultural uses or assessment for agricultural land; or (3) the landowner's offer, if one has been made.

NRCS is making a few adjustments to the compensation section of the final rule in response to recent changes made to the Department of Transportation's regulations to implement the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, 49 CFR Part 24, 7 CFR Part 21. In particular, NRCS relied upon an exemption for voluntary transactions in the former Department of Transportation regulations for its valuation methodology under the floodplain easement component of EWP. The Department of Transportation published its new regulations on January 4, 2005 (70 FR 590). The new Department of Transportation regulations have removed the voluntary transaction exemption, and therefore, NRCS modified the final rule to reflect that NRCS will follow applicable regulation and other law in its determination of easement compensation.

*Section 624.10(c).* Although no comments were received on this section, NRCS changed the language in this final regulation to accurately identify its policy related to easement modifications and terminations. The agency does not

## National Emergency Watershed Protection Program Manual

have the authority for either action. NRCS does have the authority under (7 U.S.C. 428a), in limited situations, to accept land exchanges.

**Section 624.11 Waivers.** Although no public comments were received on this section, NRCS is clarifying in the final rule that the NRCS Deputy Chief for Programs has the authority to waive any provision of these regulations to the extent allowed by law when the agency makes a written determination that such waiver is in the best interest of the Federal government. NRCS clarified that the determination must be in writing and in the best interest of the Federal government. NRCS will, upon request, make waivers available to the public in accordance with the Freedom of Information Act and 16 U.S.C. 3844(b).

### List of Subjects in 7 CFR Part 624

Disaster assistance, Floodplain easement, Flooding, Imminent threat, Natural disaster, Watershed impairment.

■ Accordingly, for the reasons stated in the preamble, Part 624 of Title 7 of the Code of Federal Regulations is revised to read as follows:

## PART 624—EMERGENCY WATERSHED PROTECTION

Sec. 624.1 Purpose. 624.2 Objective. 624.3 Scope. 624.4 Definitions. 624.5 Coordination. 624.6 Program administration. 624.7 Cost-sharing. 624.8 Assistance. 624.9 Time limits. 624.10 Floodplain easements. 624.11 Waivers.

**Authority:** Sec. 216, P.L. 81–516, 33 U.S.C. 701b–1; Sec. 403, P.L. 95–334, as amended, 16 U.S.C. 2203; 5 U.S.C. 301.

### § 624.1 Purpose.

The Natural Resources Conservation Service (NRCS) and United States Forest Service (FS) are responsible for administering the Emergency Watershed Protection (EWP) Program. This part sets forth the requirements and procedures for Federal assistance, administered by NRCS, under Section 216, Public Law 81–516, 33 U.S.C. 701b–1; and Section 403 of the Agricultural Credit Act of 1978, Public Law 95–334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, 16 U.S.C. 2203. The Secretary of Agriculture has delegated the administration of the EWP Program to the Chief of NRCS on state, tribal, and private lands, and Chief of FS on National Forest Systems lands, including any other lands that are administered under a formal agreement with the FS. The FS administers the EWP Program in accordance with the Forest Service Manuals 1950 and 3540, and the Forest Service Handbook 1909.15

### § 624.2 Objective.

The objective of the EWP Program is to assist sponsors, landowners, and operators in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by a natural disaster that causes a sudden impairment of a watershed.

### § 624.3 Scope.

EWP Program technical and financial assistance may be made available to a qualified sponsor, or landowners when a floodplain easement is the selected alternative by the Secretary of Agriculture, upon a qualified sponsor or landowner's request when a Federal emergency is declared by the President or when a local emergency is declared by the NRCS State Conservationist. The EWP Program is designed for emergency recovery work, including the purchase of floodplain easements. Emergency watershed protection is authorized in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

### § 624.4 Definitions.

(a) *Defensibility* means the extent to which an action is:

- (1) More beneficial than adverse in the extent and intensity of its environmental and economic effects;
- (2) In compliance with Federal, State, and local laws;
- (3) Acceptable to affected individuals and communities;
- (4) Effective in restoring or protecting the natural resources;
- (5) Complete with all necessary components included; and
- (6) Efficient in achieving the desired outcome.

(b) *Exigency* means those situations that demand immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damages or the potential loss of life if action to remedy the situation is not taken immediately.

(c) *Floodplain easement* means a reserved interest easement, which is an interest in land, defined and delineated in a deed whereby the landowner conveys all rights and interest in the property to the grantee, but the landowner retains those rights, title, and interest in the property which are specifically reserved to the landowner in the easement deed.

(d) *Imminent threat* means a substantial natural occurrence that could cause significant damage to property or

## National Emergency Watershed Protection Program Manual

threaten human life in the near future.

(e)(1) *Limited resource area* is defined as a county where:

- (i) Housing values are less than 75 percent of the State housing value average; and
- (ii) Per capita income is 75 percent or less than the National per capita income; and

(iii) Unemployment is at least twice the U.S. average over the past 3 years based upon the annual unemployment figures.

(2) NRCS will use the most recent National census information available when determining paragraphs (e)(1)(i) and (ii) of this section.

(f) *Natural occurrence* includes, but is not limited to, floods, fires, windstorms, ice storms, hurricanes, typhoons, tornadoes, earthquakes, volcanic actions, slides, and drought.

(g) *Project sponsor* means a State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required.

(h) *Watershed emergency* means adverse impacts to resources exist when a natural occurrence causes a sudden impairment of a watershed and creates an imminent threat to life or property.

(i) *Watershed impairment* means the situation that exists when the ability of a watershed to carry out its natural functions is reduced to the point where

an imminent threat to health, life, or property is created. This impairment can also include sediment and debris deposition in floodplains and upland portions of the watershed.

### § 624.5 Coordination.

(a) If the President declares an area to be a major disaster area, NRCS will provide assistance which will be coordinated with the Federal Emergency Management Agency (FEMA) or its designee. FEMA is the lead federal agency for Presidentially-declared natural disasters.

(b) When an NRCS State Conservationist determines that a watershed impairment exists, but the President does not declare an area to be a major disaster area, FEMA does not coordinate assistance. In this situation, NRCS will assume the lead, provide assistance, and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

(c) In the case where the watershed impairment exists solely on FS System lands, the FS will determine the existence of the impairment, assume the lead, provide assistance and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

### § 624.6 Program administration.

(a) *Sponsors.* (1) When the State Conservationist declares that a watershed impairment exists, NRCS may, upon request, make assistance available to a sponsor which must be a State or political subdivision thereof, qualified Indian tribe or tribal organization, or unit of local government. Private entities or individuals may receive assistance only through the sponsorship of a governmental entity.

(2) Sponsors must:

(i) Contribute their share of the project costs, as determined by NRCS, by providing funds or certain services necessary to undertake the activity. Contributions that may be applied towards the sponsor's applicable cost-share of construction costs include:

(A) Cash;

(B) In-kind services such as labor, equipment, design, surveys, contract administration and construction inspection, and other services as determined by the State Conservationist; or

(C) A combination of cash and in-kind services;

(ii) Obtain any necessary real property rights, water rights, and regulatory permits; and

(iii) Agree to provide for any required operation and maintenance of the completed emergency measures.

(b) *Eligibility.* NRCS will provide assistance based upon the NRCS State Conservationist's determination that the current condition of the land or watershed impairment poses a threat to health, life, or property. This assistance includes EWP practices associated with the removal of public health and safety threats, and restoration of the natural environment after disasters, including acquisition of floodplain easements.

(1) Priority EWP assistance is available to alleviate exigency situations. NRCS may approve assistance for temporary correction practices to relieve an exigency situation until a more acceptable solution can be designed and implemented.

(2) *Limitations.* (i) In cases where the same type of natural event occurs within a 10-year period and a structural measure has been installed or repaired twice within that period using EWP assistance, then EWP assistance is limited to those sites eligible for the purchase of a floodplain easement as described in § 624.10 of this part.

(ii) EWP assistance will not be used to perform operation or maintenance, such as the periodic work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally designed and installed.



## National Emergency Watershed Protection Program Manual

- (iii) EWP assistance will not be used to repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.
- (iv) EWP assistance, funded by NRCS, will not be provided on any Federal lands if such assistance is found to augment the appropriations of other Federal agencies.
- (v) EWP assistance is not available for repair or rehabilitation of nonstructural management practices, such as conservation tillage and other similar practices.
- (3) *Repair of structural, enduring, and long-life conservation practices.* (i) Sponsors may receive EWP assistance for structural, enduring, and long-life conservation practices including, but not limited to, grassed waterways, terraces, embankment ponds, diversions, and water conservation systems, except where the recovery measures are eligible for assistance under the Emergency Conservation Program administered by the Farm Service Agency.
- (ii) EWP assistance may be available for the repair of certain structural

practices (*i.e.*, dams and channels) originally constructed under Public Law 83–566; Public Law 78–534; Subtitle H of Title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 *et seq.*, commonly known as the Resource Conservation and Development Program); and the Pilot Watershed Program of the Department of Agriculture Appropriation Act of 1954 (Pub. L. 83–156; 67 Stat. 214). EWP assistance may not be used to perform operation and maintenance activities specified in the agreement for the covered structure project entered into with the eligible local organization responsible for the works of improvement.

- (iii) NRCS may authorize EWP assistance for modifying damaged practices when technology advances or construction techniques warrant modifications, including when modifications are the result of federal permitting or other requirements necessary to implement the recovery measure, and will be cost-shared as described in § 624.7.
- (iv) EWP assistance is only available when public or private landowners, land managers, land users, or others document they have exhausted or have insufficient funding or other resources available to provide adequate relief from applicable hazards.
- (4) Increased level of protection. In cases other than those described in paragraph (b)(3)(iii) of this section, if the sponsor desires to increase the level of protection that would be provided by the EWP practice, the sponsor will be responsible for paying 100 percent of the costs of the upgrade or additional work.
- (c) *Eligible practices.* NRCS will only provide assistance for measures that:
  - (1) Provide protection from additional flooding or soil erosion; and,
  - (2) Reduce threats to life or property from a watershed impairment, including sediment and debris removal in floodplains and uplands; and
  - (3) Restore the hydraulic capacity to the natural environment to the maximum extent practical; and
  - (4) Are economically and environmentally defensible and technically sound.
- (d) *Documentation.* NRCS will document the economic rationale of proposed practices in appropriate detail before the allocation of emergency funding, including projects under consideration for floodplain easements in § 624.10. Generally, the expected value of the property restored should exceed the cost of emergency measures, including taking into consideration

environmental benefits. Documentation will include, but is not limited to:

- (1) Number of locations and extent of damage, including environmental and cultural resources at risk, because of the watershed impairment;
- (2) Estimated damages to the values at risk if the threat is imminent but not yet realized;
- (3) Events that must occur for any imminent threat to be realized and the estimated probability of their occurrence both individually and collectively;
- (4) Estimates of the nature, extent, and costs of the emergency practices to be constructed to recover from an actual threat or relieve an imminent threat;
- (5) Thorough description of the beneficial and adverse effects on environmental resources, including fish and wildlife habitat;
- (6) Description of water quality and water conservation impacts, as appropriate;
- (7) Analysis of effects on downstream water rights; and
- (8) Other information deemed appropriate by NRCS to describe adequately the environmental impacts to comply with the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and related requirements.

(e) *Implementation.* When planning emergency recovery practices, NRCS will emphasize measures that are the most economical and are to be accomplished by using the least damaging practical construction techniques and equipment that retain as much of the existing characteristics of the landscape and habitat as possible. Construction of emergency practices may include, but are not limited to, timing of the construction to avoid impacting fish spawning, clearing of right-of-ways, reshaping spoil, debris removal, use of bioengineering techniques, and revegetation of disturbed areas. Mitigation actions needed to offset potential adverse impacts of the EWP Program practices should be planned for installation before, or concurrent with, the installation of the EWP Program practices. In rare occurrences where mitigation cannot be installed concurrently, plans will require mitigation be accomplished as soon as practical.

## National Emergency Watershed Protection Program Manual

(f) NRCS may determine that a measure is not eligible for assistance for any reason, including economic and environmental factors or technical feasibility.

### **§ 624.7 Cost-sharing.**

(a) Except as provided in paragraph

(b) of this section, the Federal contribution toward the implementation of emergency measures may not exceed 75 percent of the construction cost of such emergency measures, including work done to offset or mitigate adverse impacts as a result of the emergency measures.

(b) If NRCS determines that an area qualifies as a limited resource area, the Federal contribution toward the implementation of emergency measures may not exceed 90 percent of the construction cost of such emergency measures.

### **§ 624.8 Assistance.**

(a) Sponsors must submit a formal request to the State Conservationist for assistance within 60 days of the natural disaster occurrence, or 60 days from the date when access to the sites becomes available. Requests must include a statement that the sponsors understand their responsibilities and are willing to pay its cost-shared percentage as well as information pertaining to the natural disaster, including the nature, location, and scope of the problems and the assistance needed.

(b) On receipt of a formal request for EWP assistance, the State Conservationist or designee shall immediately investigate the emergency situation to determine whether EWP is applicable and to prepare an initial cost estimation for submission to the NRCS Chief or designee. The cost estimation will be submitted no later than 60 days from receipt of the formal request from the sponsor. The State Conservationist will take into account the funding priorities identified in paragraph (c) (3) of this section. The State Conservationist will forward the damage survey report, which provides the information pertaining to proposed EWP practice(s) and indicates the amount of funds necessary to undertake the Federal portion, to the NRCS Chief or designee. This information will be submitted no later than 60 days from receipt of the formal request from the sponsor, or no later than 60 days from the date funding is made available to the State Conservationist, whichever is later. NRCS may not commit funds until notified by the Chief, or designee, of the availability of funds.

(c) Before the release of financial assistance, NRCS will enter into a Cooperative Agreement with a sponsor that specifies the responsibilities of the sponsor under this part, including any required operation and maintenance responsibilities. NRCS will not provide funding for activities undertaken by a sponsor prior to the signing of the agreement between NRCS and the sponsor.

(1) NRCS will only provide funding for work that is necessary to reduce applicable threats.

(2) Efforts must be made to avoid or minimize adverse environmental impacts associated with the implementation of emergency measures, to the extent practicable, giving special attention to protecting cultural resources and fish and wildlife habitat.

(3) Funding priorities for recovery measures. NRCS will provide EWP assistance based on the following criteria, which are ranked in the order of importance:

(i) Exigency situations;

(ii) Sites where there is a serious, but not immediate threat to human life;

(iii) Sites where buildings, utilities, or other important infrastructure components are threatened;

(iv) When reviewing paragraphs (c)(3)(i) through (iii) of this section, NRCS will take into account the following resources as they may affect the priority, including, but not limited to:

(A) Sites inhabited by federally listed threatened and endangered species or containing federally designated critical habitat where the species or the critical habitat could be jeopardized, destroyed, or adversely modified without the EWP practice;

(B) Sites that contain or are in the proximity to cultural sites listed on the National Register of Historic Places where the listed resource would be jeopardized if the EWP practice were not installed;

(C) Sites where prime farmland supporting high value crops is threatened;

(D) Sites containing wetlands that would be damaged or destroyed without the EWP practice;

(E) Sites that have a major effect on water quality; and

(F) Sites containing unique habitat, including but not limited to, areas inhabited by State-listed threatened and endangered species, fish and wildlife management areas, or State-identified sensitive habitats; and

(v) Other funding priorities established by the Chief of NRCS.

### **§ 624.9 Time limits.**

Funds must be obligated by the State Conservationist and construction completed within 220 calendar days after the date funds are committed to the State Conservationist, except for exigency situations in which case the construction must be completed within 10 days after the date the funds are committed.

**§ 624.10 Floodplain easements.**

(a) *General.* NRCS may purchase floodplain easements as an emergency measure. NRCS will only purchase easements from landowners on a voluntary basis.

(b) *Floodplain easements.* (1) Floodplain easements established under this part will be:

(i) Held by the United States, through the Secretary of Agriculture;

(ii) Administered by NRCS or its designee; and

(iii) Perpetual in duration;

(2) *Eligible land.* NRCS may determine land is eligible under this section if:

(i) The floodplain lands were damaged by flooding at least once within the previous calendar year or have been subject to flood damage at least twice within the previous 10 years; or

(ii) Other lands within the floodplain would contribute to the restoration of the flood storage and flow, erosion control, or that would improve the practical management of the easement; or

(iii) Lands would be inundated or adversely impacted as a result of a dam breach.

(3) *Ineligible land.* NRCS may determine that land is ineligible under this section if:

(i) Implementation of restoration practices would be futile due to “onsite” or “off-site” conditions;

(ii) The land is subject to an existing easement or deed restriction that provides sufficient protection or restoration, as determined by the Chief of NRCS, of the floodplain’s functions and values; or

(iii) The purchase of an easement would not meet the purposes of this part.

(4) *Compensation for easements.* NRCS will determine easement compensation in accordance with applicable regulation and other law.

(5) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment that is offered by NRCS. NRCS reserves the right not to purchase an easement if the easement compensation for a particular easement would be too expensive, as determined by NRCS.

(6) NRCS may provide up to 100 percent of the restoration and enhancement costs of the easement. NRCS may enter into an agreement with the landowner or another third party to ensure that identified practices are implemented. NRCS, the landowner, or other designee may implement identified practices. Restoration and enhancement efforts may include both

structural and non-structural practices. An easement acquired under this part shall provide NRCS with the full authority to restore, protect, manage, maintain, and enhance the functions and values of the floodplain.

(7) The landowner must:

(i) Comply with the terms of the easement;

(ii) Comply with all terms and conditions of any associated agreement; and

(iii) Convey title to the easement that is acceptable to NRCS and warrant that the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(8) Structures, including buildings, within the floodplain easement may be demolished and removed, or relocated outside the 100-year floodplain or dam breach inundation area.

(c) Easements acquired under this part may not be modified or terminated. However, in limited situations, as determined by the Chief of NRCS and when in the best interest of the Government, land exchanges may be authorized pursuant to (7 U.S.C. 428a) and other applicable authorities.

(d) *Enforcement.* (1) In the event of a violation of an easement, the violator will be given reasonable notice and an opportunity to correct the violation within 30 days of the date of the notice, or such additional time as NRCS may allow.

(2) NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important floodplain functions and values or other rights of the United States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner’s negligence or failure to comply with easement or agreement obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any associated agreements. Such withheld funds may be used to offset costs incurred by the United States, in any remedial actions, or retained as damages pursuant to court order or settlement agreement.

(4) NRCS will be entitled to recover any and all administrative and legal costs, including attorney’s fees or

expenses, associated with any enforcement or remedial action.

(5) On the violation of the terms or conditions of the easement or related agreement, the easement shall remain in force, and NRCS may require the landowner to refund all or part of any payments received by the landowner under this Part, together with interest thereon as determined appropriate by NRCS.

## National Emergency Watershed Protection Program Manual

(6) All the general penal statutes relating to crimes and offenses against the United States shall apply in the administration of floodplain easements acquired under this part.

### **§ 624.11 Waivers.**

To the extent allowed by law, the NRCS Deputy Chief for Programs may waive any provision of these regulations when the agency makes a written determination that such waiver is in the best interest of the Federal government.

Signed in Washington, DC, on March 21, 2005.

**Bruce I. Knight,**  
*Chief, Natural Resources Conservation Service.*

[FR Doc. 05-6098 Filed 4-1-05; 8:45 am]

**BILLING CODE 3410-16-U**